STATE OF MARYLAND

MARVIN MANDEL
GOVERNOR

DEPARTMENT OF LICENSING AND REGULATION

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January 4, 1972

Honorable Marvin Mandel
Governor of Maryland
Executive Department
Annapolis, Maryland 21404

Dear Governor Mandel:

Complying with your directive of January 29, 1971, that I initiate a study of the overall problems relating to automobile insurance, I am now pleased to present a report of our findings.

Public hearings were held in the various geographical regions of the State to afford the average citizen, as well as the insurance industry, an opportunity to express their opinions relating to the problems of automobile insurance. An overwhelming percentage of citizen complaints received by this office referred to three main areas: policy terminations, insurance classification and surcharge methods, and the general high cost of insurance. A thorough examination of the present insurance reparations system is presented as the first section of this report.

A review of existing proposed insurance reforms including the various "no-fault" concepts, three of which are enclosed as appendices to this report, indicates that any proposed solution which drastically limits an individual's right to full compensation for losses sustained or that eliminates personal responsibility for driving conduct provides an unrealistic and unsatisfactory answer to actual problems confronting the Maryland motorist.

To resolve the actual issues upon which public dissatisfaction is based, a state-operated insurance concept has been formulated under which our citizens could be assured of insurance protection at just and equitable premium rates. It is apparent

that where industry is either unwilling or unable to satisfy basic necessities of public welfare, government intervention is necessary. As the general public interest is paramount and all other interests secondary and subordinate thereto, I am therefore compelled to recommend a state-operated program as opposed to the traditional one of private insurance companies.

Your approval of our recommendations will necessarily need legislation to detail certain aspects of the state-operated insurance concept. My staff and I will be available to cooperate with your Chief Legislative Officer in drafting this proposal in bill form.

Sincerely,

John R. Jewell
Secretary

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Public discontent with the present automobile reparations system, stemming mainly from insurance industry practices such as cancellations and non-renewals of policies, arbitrary classification and rating systems, and premium surcharges, is an undisputed fact. Moreover, the high cost of available automobile liability insurance is increasingly becoming a problem area of major significance. The purpose of this study is to determine the related causes of existing insurance problems, to review possible solutions and reforms, and to endorse a system of insurance that meets the public demand for a responsive program.

Criticisms of the existing system basically relate to two primary considerations. Proponents for programs that would include a revision of the present reparations system naturally discredit the current method for compensating the accident victim. Most often asserted is that because the present automobile liability insurance system is tied to the requirements of tort law, a system exists that is alleged to be incomplete, inequitable, slow, expensive, and that produces exaggerated claims.[1] On the other hand, advocates for retaining the tort system, which is based on the concept of personal responsibility for one's own actions, maintain that the primary reason for

existing difficulties lies not with the tort system, but with the methods which insurers utilize for providing insurance coverage. Insurance industry practices frequently cited as factors contributing to the existing problems involve complex industry accounting procedures which often fail to disclose the actual financial picture of companies applying for rate increases, arbitrary termination of insurance coverage based upon computer predictions that certain individuals may be susceptible to an accident in the near future, and capricious rating and surcharge methods which discriminatorily force groups or classes of policyholders to pay excessive premium rates, not because of individual driving records, but because they are a member of that class. To fully comprehend the merits of either criticism it is first necessary to examine the function of tort law within the present autmobile liability system, and to review the ramifications of proposals to realign individual rights as relating to automobile accidents.

Tort law basically provides that where a person commits a wrongful or negligent act with a resultant injury to another, a civil action will lie and the victim is entitled to full compensation for the consequential damages.

Consequential damages may be recovered for both property destruction and economic loss as a result of personal injury. Damages for personal injury claims under the present tort system may be divided into three elements: "out of pocket" economic damage, "loss of future earnings," and "general damages." Because of tort law which requires an individual to be financially responsible for causing economic loss to another, the necessity for automobile liability insurance to indemnify oneself against threats to his financial security is evident. The necessity of automobile liability protection is reflected in various state statutes which encourage, and in some states require, the motorist to carry it. The crisis facing the motoring public today is that the insurance industry is unable to halt the escalating cost of insurance premiums, and at the same time, offer readily available insurance to the public. This claim is substantiated in position papers and articles published by various segments of the insurance industry. A recent news article written by the Maryland Association of Insurance Agents and the Tri State Mutual Agents Association stated that "auto insurance rates in Maryland are artificially depressed and cannot long continue to be depressed if auto insurance is to continue to be readily available to most drivers."[2] The reason most often cited

by the industry, as well as those desiring to restructure the present tort system, for the ills relating to automobile insurance is attributed to alleged deficiencies found within a tort-based system.

A principal criticism of the tort liability system is that the settlement process is slow, and in some instances, it is claimed that "automobile litigation is the major cause of court congestion."[3] Professor Jeffrey O'Connell, co-author of the Keeton O'Connell Basic Protection Plan (a no-fault insurance concept), has consistently raised this argument as a basis for reforming the present automobile reparations system. In a Connecticut Law Review article he wrote that:

> "All this squabbling among insurance adjusters, lawyers, and motorists has produced enormous pressure on the courts in our urban areas where auto accident cases typically constitute about 2/3 of the jury docket. This produces average delays in our urban areas of 2 1/2 years for the trial of personal injury suits. In Chicago the delay is over 60 months."[4]

The claim that court delay and court congestion cause persons involved in motor vehicle accidents to wait many months and even years before compensation is received has been widely publicized by the news media. But studies

conducted by the Defense Research Institute, Inc., indicate otherwise:

> "...[O]ur research...has shown that 94% of auto liability claims are settled without a suit ever being filed and that only one-third of the remaining 6% (2% of the total) are tried to a verdict... Therefore, most auto liability claims never reach the courts."[5]

Defense Research Studies of those claims that do not reach the court (94% of total) indicate:

> "...that 68% of claims are settled within 3 months; 81% within 6 months; 86% within 9 months; 89% within 12 months; 93% within 18 months; and only 7% taking more than 18 months to settle."[6]

It appears then that the "delay argument" raised against the tort-based reparations system primarily relates to anywhere from 2% to 6% of the total automobile liability claims. As relating to these instances where a court action has been filed, typical claims that a 2 1/2 year wait exists nationally before the case may be heard and continuous citations of cities that admit difficulty with their court system, such as Boston, Chicago, and New York, tend to distort the actual situation. That there does exist serious court delay in some urban areas cannot be disputed. However, a study[7] of the average time period

for a motor tort case to come to trial in selected cities which approached or exceeded a 12 month limit showed that:

15 out of 56 cities exceeded 2 years;

22 out of 56 cities were between 1 and 2 years;

19 out of 56 cities had less than a 1 year delay;

in all cities, except one, hardship cases could be advanced for quick trial.

This survey would indicate that court delay does not affect every court and every litigant, and that delay was actually limited to a small number of metropolitan jurisdictions.

In Maryland 1969-70 statistics[8] reflect that the time lapse between filing of a motor tort action and trial date is substantial enough to merit consideration. At the state trial court level the case load is divided into three categories: law, equity, and criminal actions. Law filings constituted 34.5% of the total judicial case load and motor tort cases accounted for 34.7% of the total law filings. Motor tort cases, then, would constitute 12% of the entire trial docket which, in addition to law actions, would also include equity and criminal cases. When considering that projections estimate approximately 155,000 automobile claims are incurred yearly in Maryland,

the total motor tort case load of 9,406[9] does not seem to reflect an unusually large proportion of such claims being litigated. Moreover, the 1969-70 statistics indicate that there has been a gradual decline in the percentage of motor tort cases as related to the total of law cases from 35.4% in 1968-69 to 34.7% in 1969-70.

When analyzing the 1969-70 court statistics one has to be primarily concerned, not with the number of automobile cases filed, but with the lapse of time between filing and the commencement of trial. The following table[10] is extracted from the Annual Report 1969-70 as a basis for discussion.

LAW CASES

(1969-70)

TIME LAPSE BETWEEN FILING AND TRIAL WITH NUMBER TRIED

	Time Lapse In Months				
	State	Baltimore City	All Counties	Four Urban Counties	Other 19 Counties
TOTAL Cases	15.8	22.7	11.9	12.3	11.1
JURY Cases	19.0	25.6	14.9	14.7	15.3
Motor Torts	20.8	27.9	14.9	14.6	16.0
Other Torts	19.2	27.3	15.4	15.8	14.0
Other Cases	15.8	18.7	14.5	14.3	14.9
NON-JURY Cases	13.9	20.8	10.2	10.8	9.2
Motor Torts	21.4	24.9	15.4	15.1	15.8
Other Torts	16.2	26.7	11.3	11.0	12.1
Other Cases	11.4	17.1	9.4	10.1	7.9

It is significant to note that the State average time lapse of 20.8 months for jury cases and 21.4 months for non-jury cases seems to be largely influenced by the Baltimore City statistics of 27.9 months and 24.9 months, respectively. As Baltimore City recorded 49.1% of the total motor torts filed, the State average is unfavorably weighted by the inclusion of city statistics. A more representative picture would be gained by stating that Baltimore City has a time lapse average of about 26 months, while the rest of the State averages around 15.5 months. Additional statistics from Thomas P. MacCarthy, Administrator of the Supreme Bench of Baltimore City, based on a study of the city's court system by the Institute of Judicial Administration, indicate that the average time lapse between filing and trial has been steadily decreasing from 1969 to 1971, and during that period, the average time lapse has been reduced by 4.3 months. Correlating this information with the 1969 Annual Report average, the present time lapse in Baltimore City would be approximately 22 months.

When reviewing the trial court case load of 1969-70 and the time lapse involved between filing and trial, it must be remembered that these statistics were compiled prior to the enactment of the Maryland District Court System in 1971. In that the District Court is now a

court of record with increased jurisdictional monetary limits of up to $5,000, the Maryland Circuit Court System should be relieved of a substantial portion of the motor tort cases now on its docket. Although no experience data is yet available to evaluate the precise impact the implementation of the District Court System will have, it should be noted that a 1970 United States Department of Transportation study[11] reported that over 50% of persons injured or killed in automobile accidents received settlements of less than $5,000 and that over 30% of Maryland litigants in 1969 in motor tort cases elected to have their cases tried in a non-jury trial. To the extent that the court case load influences the time lapse between filing and trial, the interplay of the above-cited factors should significantly lessen the Circuit Court case load, thereby reducing the time lapse.

The remaining question is to what extent does the motor tort case load actually affect the average litigation time. Administrators from both the District Court and the Circuit Court Systems state that the backlog of cases is merely a "paper backlog." Sources from the District Court indicate that once counsel agrees to a trial date, the case may be heard in 60-90 days, while

SETTLEMENTS BY TYPE OF ACCIDENT[13] AND TYPE OF CLAIM

	Percent settled claim against other party		Percent settled claim against own company	
	Property damage	Personal injury	Property damage	Personal injury
Settlement for				
Under $100	29	*	20	13
$100-499	48	28	50	24
$500 or more	18	64	20	52
Unknown amount a/	5	8	10	11
Total	100	100	100	100
Satisfaction with settlement				
Completely satisfied	77	80	82	74
Not completely satisfied because:	23	20	18	26
Amount insufficient	6	10	7	19
Delay	8	*	1	*
Inconvenience	2	8	*	2
Other reasons	9	3	12	6
Total	b/	b/	b/	b/
Number of cases settled	141	61	147	54

* Less than one-half percent.

a/ Includes respondents who didn't know or for whom no answer was ascertained.

b/ Two mentioned allowed; therefore, percents do not add to total line.

The questions were: "How much did you get? Were you satisfied with the settlement?"

While 77% and 80% of the respondents of the study expressed complete satisfaction for claims settled against the other party, only 8% expressed dissatisfaction because of delay. It is interesting to note that this 8% related to property damage settlements, while no appreciable discontent was registered as relating to personal injury claims of which a higher proportion involves court litigation.

In summary, then, it may be concluded that settlement practices for non-litigated claims generally do not result in unreasonable delays; that motor tort cases which comprise 12% of the total court case load in Maryland do not produce overwhelming court congestion; that the number of motor tort cases is but one variable in the time lapse between filing and trial date; that the general public does not consider an "alleged slow settlement process" to be a major area of dissatisfaction. Perhaps the following comment of a special committee of the American Insurance Association places the entire consideration in the proper perspective:

> "It is true that more trial judges are needed in many parts of the country. Court congestion and delay cannot be condoned. However, court delay, deplorable as it is, is not the major weakness in the present system. If it were cured overnight, complaints of high cost and inequities would persist."[14]

Other related criticisms of an automobile reparations system based on tort law include allegations that the system is incomplete, inequitable, and that it produces exaggerated claims. The existing system is alleged to be incomplete because "the present automobile insurance system necessarily denies recovery to many persons injured in automobile accidents."[15] It cannot be denied that while tort law requires the innocent automobile accident victim to be compensated by another for losses incurred as a result of that individual's wrongful or negligent actions, the system is incomplete in that the wrongdoer generally must bear financial responsibility for his own distress. The basic premise of the tort system is "that there is a difference between right and wrong, and if one man carelessly injures his fellow man by wrongful conduct, the innocent victim ought to be compensated for all his losses, and the wrongdoer should be liable for the losses he has caused by violating the rule of careful conduct."[16] An opinion survey conducted by the State Farm Insurance Companies indicated that 94.2% of the respondents agree with the fault principle that "[T]he driver who causes an accident, or his insurance company, should pay for the

losses of other people in the accident."[17] In a similar determination, a study[18] conducted by the U. S. Department of Transportation revealed that respondents expressed more satisfaction than dissatisfaction by a 3:1 ratio with the statement:

> "In most states, this is how automobile liability insurance is set up now: if you are involved in an accident, you have a claim against another person (or his insurance company) only if you can prove that the other person alone is at fault. Would you say that this is a good system, a bad system, or what?"[19]

It appears then that the general public favors a system of reparations that holds a motorist responsible for fair and adequate compensation of damages he may have caused through his own actions.

However, even within the present reparations system, there is opportunity for the motorist to indemnify himself against loss occasioned as a result of his own actions. Optional coverages, such as medical, hospital, wage loss and property damage payments, which provide first party reparations, regardless of fault, may be purchased at additional premiums. In this manner, a motorist may select a "complete" insurance program that not only indemnifies him against claims by others, but that also provides compensation for his own damages, even

if his actions were the cause of the accident.

A corollary to the "incomplete system" criticism relates to the application of the contributory negligence doctrine which in some instances denies recovery to all parties involved in an automobile accident. Both opponents and proponents of a tort-based automobile reparations system argue that the common law doctrine of contributory negligence too often produces results that are harsh and unjust. Basically the rule of contributory negligence holds that a plaintiff in a negligence case is not entitled to recover at all if his own negligence contributed in even the slightest degree to the proximate cause of the accident. That is to say, if the victim's innocence is impaired by 1%, his recovery is impaired by 100%. Until recently, this rule was prevalent in most jurisdictions, but as members of the legal community, as well as various insurance interests, are in complete accord that this common law doctrine produces unnecessary inequitable situations, a pronounced trend toward reform is evident. The adoption of the more reasonable comparative negligence doctrine is espoused by increasing numbers of interested parties. Although there is considerable divergence among the advocates of comparative negligence as to the form it should take, generally the Wisconsin rule that a plaintiff may recover as long as

his negligence is less than that of the other party, with his recovery being diminished proportionate to his negligence, is preferred. Although twelve states[20] have adopted comparative negligence rules, the existing criticism of the contributory negligence doctrine retains merit in the remaining jurisdictions that have not.

Critics of the tort liability system have consistently demurred to the availability of awards for general damages which an accident victim is entitled to receive. General damages, commonly known as pain and suffering damages, are those intangible losses suffered in connection with a personal injury and may include compensation for pain, embarrassment, mental anguish, inconvenience, loss of potential for marriage, and other kinds of loss which may have accrued from the tortious action. Primarily as a method for stabilizing the cost of insurance, various tort system critics have advocated the elimination or restriction of a claimant's right to receive general damages. Though the overriding rationale for restricting recovery for general damages is cost stabilization by eliminating an item of recovery, two other frequently mentioned reasons are that the system invites exaggerated claims and that as general damages are not measurable in precise monetary amounts, financial

Other justifications introduced as a basis for restricting general damages are that by permitting recovery for intangible loss, exaggerated claims are encouraged and that it is impossible to measure pain and suffering in terms of monetary amounts. The latter position was espoused by R. G. Chilcott, Vice President of Nationwide Insurance Companies, when he stated that:

> "[T]here is no equitable way to put a dollar value on pain and suffering.
>
> "It's true that a seriously injured victim may not be able to play golf, or go fishing. But we submit to this Committee that no amount of money would enable him to do those things if medical science is unable to correct the damage that has been done. Money paid for intangible losses of this kind does not restore the ability that was lost."[22]

In a critique of an automobile insurance proposal prepared by the American Insurance Association, the Defense Research Institute, Inc., responded to the argument that general damages should not be included in a reparations system because it is not susceptible to objective measurement by commenting that:

> "Recognition is now made of the fact that persons may be forced to endure pain, suffering, and inconvenience through no fault of their own... The basic principle applies that a person who causes injury to another should be responsible for seeing to it that the injured person is fairly and adequately compensated. Anguish and inconvenience are now considered as much a part of that injury as the lacerated bone, torn muscles, and broken bones.

> "The present system does not pretend to set on exact question of pain... No two humans are alike, and it is logical to say that no two human beings experience pain to the same degree.
>
> "[Since] insurance statistics show that 98% of all auto claims are settled... involving claims for pain and suffering... it seems strange to suggest that a reasonable settlement for pain and suffering cannot be reached.
>
> "The greatness of the system is that it allows individuals to be treated as individuals... The fact that pain and suffering caused one individual by another does not work into a computer program should not be allowed to determine whether an injured person will be denied his right to recover for that damage..."[23]

A further justification for restricting or eliminating recovery for general damages is that by affording payment for intangible loss, the system invites exaggerated claims. Unquestionably, there exists a number of claims that not only exaggerate a claimant's intangible loss, but also his actual economic loss. Although the number of false or fraudulent claims made annually appears to be small in comparison to the total number of claims, no precise statistical data is available to determine the extent of such practices. It would appear though that this undesirable social behavior on the part of some claimants would not be eradicated under any type of reparations system and, not surprisingly,

criticisms of various reforms programs which have eliminated general damages include charges that "it cannot be simply assumed that fraud will disappear under a system that does not require claimants to survive the screening provided by adjusters, lawyers, judges and juries, [as] human nature will not change overnight."[24] The solution most frequently offered for any system of automobile reparations as the only significant means to alleviate the filing of fraudulent claims is to provide strict civil or criminal penalties for this activity.

Perhaps the most widely publicized criticism of the tort-based automobile reparations system is that it results in inequitable distribution of benefits: overpayment of claims for minor injuries and underpayment of claims for the most serious injuries. The basis for this criticism is found primarily in a U. S. Department of Transportation study, Economic Consequences of Automobile Accident Injuries. An evaluation of the Department of Transportation study generally concludes that:

> "When the economic loss was small, i.e., less than $500, victims recovering under tort received an average of four and one-half times their economic loss. However, at the other end of the loss spectrum, when loss was $25,000 or more, even successful tort claimants averaged a net recovery of only one-third of their economic loss."[25]

This conclusion when published as a statement fragmented from the entire body of the study appears to have profound and far-reaching effects. However, when analyzed in context with the remainder of the study, this indictment of the tort system appears to have received a disproportionate amount of misleading publicity.

For example, in citing the "massive injustice of the traditional system," the Wall Street Journal chose to quote the Department of Transportation study as showing "that the average auto insurance recovery of totally disabled accident victims in the U. S. was only $12,500--or merely 16% of their actual $78,000 economic loss."[26] These figures are extremely dramatic until one realizes that the "actual $78,000 economic loss" is not actual loss but a projection which is qualified by the authors as being of a "speculative nature"[27] and, further, that totally disabled accident victims comprise only .2 of 1% of personal injury claimants.[28] The method utilized by the authors of the Department of Transportation report to compute economic loss relied upon two types of economic loss: losses to date and future losses. Losses to date consisted of "actual expenses or losses incurred during or attributable to the period of time [18 to 30 months] between the date of the accident and the date of the

interview."[29] The second component, future losses, was based upon "the respondent's estimate of anticipated future medical and other expenses and a derived estimate of the respondent's future earnings loss."[30] The authors concede that the future losses component of the total economic loss was suspect and for that reason presented separate tabulations with and without future losses. The following table illustrates the variance between total economic loss and average economic loss to date of settlement:

TABLE 13[31]
PERCENTAGE DISTRIBUTION OF PAID PERSONAL INJURY CLAIMANTS, AVERAGE TORT PAYMENTS AND AVERAGE ECONOMIC LOSS TO DATE OF SETTLEMENT BY TYPE OF PERMANENT INJURY
(Exclusive of Lost Future Earnings)

Type of Permanent Injury	Percent of Paid Claimants	Average Payment	Average Economic Loss
Fatality	1.0%	$10,981	$3,944
Perm. Total Disability	.2	12,556	7,888
Perm. Partial Disability	4.0	7,520	3,045
Perm. Disfigurement	2.5	4,514	1,294
No Perm. Injury	92.4	830	333
All Claimants	100.0%	$ 1,313	$ 515

By subtracting the average economic loss of $7,888 from the total economic loss of $78,000[32] for permanent total disability cases, the difference of $70,112 remains as the estimated average projection of future loss. This

projection, which significantly comprises about 90% of the total economic loss for permanent total disability, has been challenged by various insurance authorities, including Harry A. Lansman, Vice President of Kemper Insurance Company, who stated that:

> "The authors of the report warned against the 'speculative nature' of the projections of future losses, the 'substantial' errors in classifying the various individuals, the arbitrary criteria used for defining serious injury, and the fact that the 'study does not provide reliable estimates of aggregates'.
>
> "Despite these warnings DOT chose to publicize the least reliable findings and to attribute to them a significance which goes far beyond the level of confidence expressed about them by the professionals who actually conducted the research."[33]

Unquestionably, the news media and other sources of "authority" have attributed to these aggregates a dependability which the authors disclaim.

Without attempting a detailed analysis of the Department of Transportation economic consequences study, a brief overview as related to the inequity of compensation in the tort settlement process is submitted:

(1) The principal focus of the study is on economic losses of accident victims due to serious injury or death from motor vehicle accidents. Those persons

sustaining serious injury or death are estimated to number 12%[34] of the total number of persons incurring automobile related injury.

(2) A primary criticism of the tort settlement process is that the most seriously injured victims are not adequately compensated for their estimated economic loss. Approximately 3%[35] of the total number of accident victims are undercompensated according to Department of Transportation statistics.

(3) A further opprobrium of the tort liability system is that claimants with lesser injuries who incur economic loss of less than $500 receive settlements from two to four times their economic loss.

Assuming that, despite the imprecision and arbitrary definition of economic loss, there exists undercompensation for some serious injury or fatality victims, various factors have been cited for this alleged deficiency of the tort settlement process. Frequently mentioned are the bargaining advantage of the insurer in serious claims, and low insurance policy limits such as the $10,000/$20,000 financial responsibility limits of many states. But as indicated in preceding paragraphs, the major component of total economic loss, the yardstick by which the Department of Transportation study measures the ability of a system to

compensate its claimants, is future losses. To adequately compensate all claimants, full recovery for the future loss element must be available. The capacity of any reparations system to provide full compensation for all accident victims is questioned even by the Department of Transportation which is primarily the force raising the issue:

> "Compensable losses, as the term is used here, includes very small and very large economic losses, and it can be legitimately questioned whether any formal reparations system--especially one based on a privately operated insurance system--can or should try to compensate fully either of these kind of losses. This is particularly true with respect to the lost future earnings of deceased victims with dependent survivors or those of permanently disabled victims..."[36]

In essence, based upon findings of questionable reliability, the Department of Transportation claims that the tort settlement process fails to fully compensate approximately 3% of persons sustaining automobile related injury yet, at the same time, indicates that reform of the tort system would not necessarily alleviate the alleged deficiency.

The overpayment of claims involving minor injuries is another target for criticism of the tort liability system. It is generally conceded that small personal injury claims of economic loss of less than $500 are overcompensated even when considering reasonable amounts of compensation for

general damages. The insurance industry rationalizes the overpayment "to avoid the time and expense of defending 'nuisance claims'."[37] But other reasons have been suggested for this situation, for example:

> "The principal pressure on the adjuster from his supervisor is to close cases promptly. There is, of course, pressure to close them cheaply, but it is not in practice as insistent and is easier to resist by depicting troublesome cases as worthy cases. Adjusters quickly learn that claims are extinguished most easily by paying them. Unclosed files form visible accumulations and generate complaints to managers and supervisors, whereas closed files trouble no one. Thus, there is strong pressure originating within the company to offer payment whenever a claims man is faced with a firm demand from a claimant."[38]

Regardless of what rationalization is attached to the practice of permitting overpayment of the minor claims, it is the industry, not the tort system, which affects this result. It would appear that had excessive claims been contested at the outset and ample precedent established for reasonable settlement of minor claims, the problem of overpaying small claims would not be facing the industry today.

The concluding criticism of those who advocate a reform of the tort-based automobile reparations system is that it is expensive to administer. The most frequently

mentioned basis for the spiraling cost of automobile insurance is that the present reparations system is tied to tort law which necessitates the determination of liability, often through the use of the judicial process. It is claimed that the cost of this procedure, primarily the cost of claimants and insurance attorneys' fees, is largely responsible for the escalating cost of insurance to the public. The comment of Melvin L. Stark, representative of the American Insurance Association, to a special committee of the Maryland Legislature typically states this position. He said that:

> "[The] basic insurance problem in Maryland is the present 'fault' or liability system. Legal fees, claims adjustment expenses and misuse of claims for intangible kinds of damage all make the present system extremely wasteful..."[39]

Based on this premise, numerous insurance reform measures have been introduced which attempt to stabilize the cost of insurance by restricting an individual's right to sue in tort, thereby purporting to eliminate "excessive" litigation costs from the system.

The cost of litigation in the present system may be traced to three main sources: claimant's attorneys, insurance attorneys, and court costs. The following table, printed in the Congressional Record, July 30, 1971, provides

basic expenditure ratios of the total premium dollar paid into the system in 1970.

Auto Liability Insurance-1970[40]

(In billions of dollars)

	Personal Injury	Property Damage	Total
Premiums	6.6	2.9	9.5
Less insurance costs:			
Overhead and adjusting	1.4	.8	.....
Sales commissions	1.0	.3	.....
Subtotal	2.4	1.1	3.5
Total	4.2	1.8	6.0
Less legal costs:			
Fees:			
Trial lawyers	1.0	.....	
Insurance lawyers	.3	.....	
Litigation	.1	.....	
Subtotal	1.4	.1	1.5
Net compensation	2.8	1.7[1]	4.5
Compensable economic loss[2]	6.8	6.3	13.1

[1]Auto collision insurance provided another $2,100,000,000 of compensation for property loss.

[2]Wage and medical loss, future earnings of fatality victims with dependent survivors and property damage.

As indicated, total legal costs in 1970 were 1.5 billion dollars. Trial lawyers received the major portion of this expense, 1 billion dollars or 10.5% of the total premium dollar. By eliminating these legal fees, it is claimed that a cost reduction in the system would result. This claim seems to be without basis. First of all, it is misleading in that trial lawyers' fees appear to be a separate entity, which, if eliminated, would result in a direct reduction of expense to the system of 1 billion dollars. This is simply not the case. To present a more accurate picture, the data should indicate that the net compensation to accident victims was 5.5, not 4.5 billion dollars, and that from this total net compensation, trial lawyers received a total of 1 billion dollars. If the role of the trial lawyer were eliminated from the system, there would not be any cost reduction provided that claimants received just compensation. The net compensation total for 1970 was based upon damages to accident victims, and this figure theoretically should remain constant whether or not the claimant is represented by attorney. If any cost reduction to the overall system were to materialize, it would be to reduce the expense of insurance attorneys, court costs, and, to some extent, claims adjusting expense. However, note that all of these expenses, particularly claims

adjusting expenses, cannot be totally eliminated from any system of insurance and the amount of savings is questionable.

Even if a substantial cost reduction could be effected by reducing litigation and attorneys' fees, there seems to be a legitimate question as to whether claimants would stand to gain satisfactory settlements by individually asserting their claims without the assistance of counsel. It would be naive to assume that insurance companies would be struck by a spirit of beneficence for injured victims after the role of attorney and the right to trial is limited. The role of counsel is emphasized by statistics which show that in cases where economic loss is over $25,000, claimants with counsel received $25,494 while those without received only $3,821.[41] It would appear that to limit the role of the attorney and the courts in a disputable quest for economy would tend to place the ordinary citizen in an intolerable position of having to rely upon the insurance industry to receive just compensation for his damages.

To summarize, the basic position of proponents of programs that would realign the basis for automobile accident reparations is that a system based on tort law is slow, incomplete and inequitable in its compensation to accident victims and that determination of liability is the major

contributing factor to the escalating cost of automobile insurance to the public. To a limited extent, isolated criticisms of certain aspects of the tort system are valid, but substantial doubt exists as to whether public dissatisfaction with automobile insurance stems from reasons attributed to tort law. The main thrust of the attack upon the tort system is that the settlement process contains varied deficiencies, yet 80%[42] of persons with claims against other parties for personal injury damages were completely satisfied. It is undisputed that public concern over the excessive cost of automobile insurance is a substantial factor in the present insurance problem, but allegations that the determination of liability is the major factor in rising costs can certainly be questioned, especially in light of the fact that attorneys' fees in 1970 totalled less than the amount expended for salesmen's commissions. Furthermore, any suggestion to realign the method of compensation for automobile accidents on a different basis other than tort liability is diametric to public opinion response which indicated that 94%[43] of persons surveyed agreed with the principle that the driver who causes the accident should pay another for his consequential damages. There have been substantial indications that public dissatisfaction results not from limitations inherent in the

tort system but rather from insurance industry practices which have produced a public outcry for assistance.

Public discontent with insurance industry practices primarily relates to discriminatory rating classifications, surcharges on premium base rates after payment by insurers to policyholders for minor claims, selectivity by insurers as to whom they will accept as policyholders, and arbitrary cancellations and non-renewals which effectively deny former policyholders the opportunity to have insurance except at substantially increased premium rates. Discriminatory rating classification is perhaps the most universal complaint of consumers about automobile insurance. Rating classifications, traditionally based upon age, sex, race, marital status, occupation, and geographical area of driving and garaging the vehicle, are presently being utilized by most automobile insurers to determine the amount of premium each policyholder is charged. The rationale of the insurance industry for a classification plan is as follows:

> "When an insurer's judgement and the information available to him tell him that one group of substantially similar individuals is more likely to have losses than others, he can conclude, at most tentatively that this group should be constituted a separate class.
>
> "Thus it is fair to charge young male drivers a different rate than married adults, because experience shows that the younger group has more accidents than the older."[44]

Consequently, city residents are forced to pay higher automobile liability premiums than suburban residents, despite the fact that the latter may commute daily to work in the city and actually may face greater exposure to city traffic. Ironically, several insurers have listed occupations which are considered the stabilizing elements of society as undesirable. Included in this high premium rate group are law enforcement officers, doctors, lawyers, editors, etc. The legitimacy of such rating classifications as valid criteria for identifying individual bad drivers or poor prospective drivers has been questioned by several authorities including Senator Warren G. Magnuson, Chairman of the U. S. Senate Commerce Committee, who said:

> "A recent study for DOT[45] claims that 'although such factors could be used to distinguish groups of drivers with significantly different accident rates, they were not reliable in predicting whether or not particular individuals would be involved in accidents.' Statistical tests applied to random sample of all drivers, could eliminate all but the best drivers, but could <u>not</u> identify <u>only</u> the worst."[46]

Evidence of public dissatisfaction with capricious rating systems is demonstrated by a public opinion survey which indicated that over 63% of the respondents disagreed with the concept of rating on the basis of age,[47] and it would appear that if other categories or groups of persons were

included, the degree of dissatisfaction would increase. It is evident that the motoring public expects to retain a casualty insurance policy at fair and equitable rates commensurate with his individual driving record and ability, and not be forced to pay additional premiums merely because he is a member of a certain class or group.

The application by insurers of premium surcharges because a policyholder was involved in an accident is another area in which public dissatisfaction is manifested. Typically, this complaint is generated by a motorist who has been driving for many years and is involved in an accident compelling his insurer to satisfy a minor claim of say less than $200. Standard industry procedure is to add a surcharge of 20 to 50% to the base rate of the premium for the next two or three years because of this accident involvement. If the policyholder has paid past premiums which invariably would more than cover the loss, vociferous objections are raised to increased rates which, in effect, seem to force the policyholder to become a self-insurer. An example of this situation was presented before the U. S. Subcommittee on Antitrust and Monopoly:

"THE COST OF ONE $94 PROPERTY DAMAGE CLAIM"

> "Dr. Ben Caudle owns two cars and he and his family have been driving for many years with no accidents. Cost for insurance on the two cars is $328 per year and is not at all unreasonable. The doctor has no complaints about this price.

> "One day he backed out of his drive and hit a parked car across the street doing $94 damage. This was a large enough claim to give Dr. Caudle 1 point in the rating system used by his insurance company. One point will increase the cost of insurance on those two cars by $56 per year for the next three years. How can you explain to the doctor why a $94 claim would increase the cost of his insurance by $168 over the next three years?"[48]

The advantage to the insurer who surcharges the policyholder is obvious. If the policyholder becomes angry and changes carriers, then the company has improved their risk selection because they have eliminated what they would term a "law-breaker or accident-prone person." On the other hand, if the policyholder stays with the company, he is going to pay for his own accident. So, in either case, the insurer cannot lose, because either way the company stands usually to get back more than it pays out, and the policyholder is maneuvered into an unconscionable position.

Selective underwriting, which results in difficulty for some motorists to obtain automobile insurance and termination of insurance coverage to others, is increasingly becoming a frustrating problem to the motoring public. United States Department of Transportation studies[49] show that 5% of all car-owning families have experienced difficulties in even obtaining insurance, while 14% of all families were subjected to cancellation or non-renewals. Families

with a personal injury accident were subjected to insurance termination at the greater rate of 23%, and 69% to 80% of all categories of car-owning families had either had their insurance terminated or heard of someone that had. Significantly, of those who had their insurance cancelled, at least 80% felt the termination to be unfair, and only 23% could obtain insurance at the same rates prior to their cancellation. Moreover, insurance carriers in the state of Maryland appear to be increasingly more selective. Statistics from public hearings conducted by the State Department of Licensing and Regulation show that 51% of all complaints registered were related to cancellations or non-renewals of insurance policies.

Arbitrary cancellation practices give the public just cause for complaint. A driver with a spotless operating record may have his policy terminated if, without his fault, someone else carelessly hits his parked car twice within the same year. Unjustified cancellations not only deny the motorist the right to continue insurance in the company of his choice but often make it impossible for him to obtain insurance at standard rates from any company, and at least 13%[50] of cancelled motorists must turn to assigned risk programs for liability coverage. Although assigned risk programs afford a motorist a legal right to obtain liability

coverage, rate surcharges for this service vary from 10% to 150%. It is often mistakenly assumed that only drivers with exceedingly poor driving records populate assigned risk programs; however, Department of Transportation studies indicate that:

> "[M]any 'clean' risks with driving records unblemished by accidents or violations are forced to resort to such plans simply because of their inability to purchase the legally required liability insurance in the voluntary market. For example, 62% of 1969 New York assigned risk plan applicants enjoyed 'clean' driving records during the preceding 36 months; the proportion was 67% in South Carolina, 57% in North Carolina, 55% in Wisconsin and 50% in Pennsylvania."[51]

Moreover, there are indications that various segments of the insurance industry are abusing the principle that assigned risk programs should be applied to major traffic violators by terminating policies of persons who have had a single accident or minor traffic convictions and, in the same breath, offering these persons insurance protection under assigned risk rates with the same company or a subsidiary thereof. This progressively worsening condition threatens the security of responsible motorists, and has resulted in the disenchantment of an increasing number of motorists with the insurance industry.

Of course, high premium cost is another area in which the public voices its dismay. Over 36% of persons appearing before hearings conducted by the Maryland Department of Licensing and Regulation expressed dissatisfaction with excessive insurance rates, while in another survey conducted by the Insurance Information Institute, 62.5%[52] of Maryland motorists said that insurance rates are higher than they should be. The industry perennially cites an increase in the number of accidents and claims, an overall inflationary trend, and large court judgments for liability cases as reasons for rising insurance costs, and no doubt these factors play an important role in the cost of insurance to the consumer. Year after year, the industry has maintained that the impact of these increased costs to the system has resulted in underwriting losses for most, if not all, of the fire and casualty companies, and insurers consistently have proclaimed that resolution of the cost problem depends upon controlling conditions and events beyond their control. However, recent developments which indicate a startling reversal of past loss and expense ratios for underwriting experience weakens the credibility of such arguments. For instance, Aetna Life & Casualty Company reported that:

> "[C]ontinuing improvement in its casualty and property business produced an underwriting gain (after participation payments) of $11.8 million for the first six months of 1971. This compares with a loss of $21.3 million for the first half of 1970."[53]

And State Farm Mutual Insurance Company announced:

> "First-quarter underwriting profits this year (1971) total $36.1 million, a sharp upswing from an $18.8 million loss a year ago and the $91.6 million loss from insurance operation in 1969."[54]

Insurers are expressing "bafflement" at this sudden burst of underwriting profitability, but there are strong indications that after years of disclaiming responsibility, the answer to resolving underwriting losses may have been found within the internal operation of the industry.

Furthermore, there exists a substantial amount of controversy surrounding the actuarial methods by which the industry presents the statistical basis for rate structures. Generally, the exclusion of investment income from underwriting profit or loss totals and complex accounting procedures relating to loss expense and incurred-unincurred net premiums tend to distort the actual financial picture of most companies. Frequently, where rate increases are requested based on underwriting losses, the same company requesting the increase will pay its parent company huge "upstream dividends" from investment income profits. Consumer advocates challenge this indirect method of siphoning cash reserves built with policy premiums to enrich parent companies and maintain that for the purpose of reducing rates, investment income and profits of

insurance companies, as well as parent corporations, should be considered in the rate-making process.

In reviewing the present state of automobile insurance, it is evident that public concern with insurance experience has reached substantial dimensions. As relating to the basis for existing insurance problems two lines of thought have emerged. On one hand it is contended that the basic legal and procedural rules (tort law) governing automobile reparations are primarily responsible for insurance ills confronting the motoring public. Those who embrace this belief generally support insurance reform based on no-fault concepts. On the other hand, it is advocated that while certain deficiencies may exist within a tort-based system, they are not the cause for public dissatisfaction with insurance, and that the principal fault for existing problems may be attributed to the "insurance component" of the system. To insure that the insurance component of the insurance reparations system meets the public need, a state-operated insurance plan has been formulated. A review and discussion of both the "no-fault" concept and a state-operated insurance plan is necessary to fully comprehend the ramifications of each proposal.

No-fault insurance concepts seek to alter the present system of first and third-party insurance coverage

to a system under which first-party coverage is expanded in various degrees as prescribed by the individual plans. In the present system, the three parties to an insurance contract are the policyholder (first party), the insurer (second party) and the victim of an accident (third party). Provided that the policyholder's negligence can be legally established, an insurance company will compensate the accident victim for consequential damages incurred as a result of the policyholder's negligent action. But it should be noted that there are also first-party coverages offered by insurers such as collision, comprehensive, medical payments and uninsured motorists' insurance, which a policyholder may purchase. Under these first-party coverages the policyholder is compensated by his insurer without the determination of liability if he sustains injury or damages. The principle of most no-fault concepts is to either partially or completely eliminate third-party coverages and require all compensation to be on a first-party basis without regard to tort fault. It would appear that, at least in theory, no-fault insurance would have advantages over a liability system, but as will be pointed out subsequently, it tends to create more problems than it solves.

Frequently abused by media commentators, as well as opponents and proponents of no-fault insurance,

one limitation of describing the system is apparent--almost no generalization is possible when reviewing the overall no-fault concept. Because of endless variations and numerous plans, any generalization that would apply to one program would not necessarily hold valid for another. For this reason, analyses of three distinct types of no-fault insurance plans are presented as appendices to this report.[55] The following examination of no-fault will attempt to critique the concept, while at the same time insuring that critical commentary is kept within the context of each particular type of program. For the purpose of this report, no-fault programs are categorized into three separate types: total no-fault, limited no-fault, and first party reparations as an overlay on the existing tort liability system.

A total no-fault system is predicated upon the concept of complete first-party reparations, i.e., compulsory self-protection coverage, which ultimately abrogates any tort liability relating to automobile accidents. Generally there are no maximum coverage limits, and all accident victims may receive compensation for full hospital, medical and rehabilitation expenses. A percentage of wage loss (usually 85%) up to a maximum monthly limit ($750-$1000)

is provided indefinitely until the accident victim can regain gainful employment or in the case of a fatality, for the period of the deceased's life expectancy. Benefits to be paid under this concept are usually reduced by collateral sources of insurance which are available to the accident victim and the types of collateral sources which are applicable vary with each plan. The right of recovery for general damages (pain and suffering, disfigurement, etc.) is abrogated with exceptions to extremely limited classes of persons. Furthermore, under a total no-fault concept, no tort liability for motor vehicle damage exists and the motorist is compelled to carry collision and comprehensive coverage to protect himself against damage to his automobile. Any possible protection gaps such as increased limits, etc., usually are available at the option of the insured at additional premium rates. The above summarized configuration of a total no-fault concept is the basis for proposed plans such as the "Complete Personal Protection Automobile Insurance Plan" offered by the American Insurance Association, the New York "Rockefeller-Stewart Proposal" and a federal bill entitled "Committee Print One of Senate Bill 945."

Recognizing that the consumer's prime concern regarding automobile insurance is its cost, many proponents of total no-fault plans claim that the implementation of such a system would result in lower premium costs. By abrogating the right to general damages, eliminating tort liability thereby reducing litigation costs, and by eliminating the overpayment of small claims, it is claimed that even though all parties will be compensated for economic loss, substantial savings of 25-40% of bodily injury premiums may be realized by policyholders. However, these assertions have been questioned even by those favoring the no-fault concept. For instance Roger C. Wilkins, Chairman of the Board of the Travelers Insurance Companies, commented that:

> "It is unfortunate that no faults promise to lower rates has captured the headlines.
>
> "There is no guarantee that initial no-fault rate reductions will be established or that escalation of these rates will not resume after the plan is adopted. Rates still react to other larger problems. If frequency and severity of accidents do not fall off sharply,... drivers in no-fault states may find their initial savings wiped out by subsequent increases."[56]

This warning takes on greater significance when comparing the total economic loss resulting from 1967 automobile

accidents which a total no-fault system promises to compensate against the total bodily injury premiums paid into the system in the same year. Total compensable loss in 1967 for medical expenses, wage loss, and other related expenses was 5.689 billion dollars.[57] This loss does not include any consideration for general damages or litigation expense, but would equal the total compensation to all accident victims promised by the total no-fault advocates. When compared against the total bodily injury premium of 4.607 billion dollars[58] in the same year, it is evident that even without considering administration costs, there simply are not enough premium dollars to permit the luxury of compensating all accident victims. Moreover, after considering a 26%[59] administration factor (which should realistically be higher because no loss adjustment expenses are included) the cost of a total no-fault system would skyrocket to 7.688 billion dollars for bodily injury coverage, which in turn would mandate at least a 50% increase in premium rates. It would appear that promised rate reductions are without basis, and that if the cost of insurance is lowered, the level of benefits paid to accident claimants must be reduced.

Because a total no-fault plan abrogates the right to bring an action in tort, a further consideration of the

insurance cost to the consumer is necessary as relating to property damage. Compensation for motor vehicle damage is not included in compensable economic loss which an accident victim is entitled to receive under a total no-fault plan. Therefore, a motorist must either purchase additional coverage such as collision or comprehensive insurance to protect himself against loss or absorb the cost of any damage which is caused to his automobile. Consider the following basic property damage rate structure as compared to proposed rate structures under a total no-fault system.

Summary of Property Damage Premiums[60]

	Damage to Property		
	Statutory	Optional	
Present System	$5,000 Property Damage	Average of $50 & $100 Deductible Collision	Total Premium
Average Cost	$32.67	$66.67	$99.34
Total No-Fault Reparations System	P. D.-Non-Auto Liability	Statutory & Optional	Total Premium
Average Cost	$3.00	$85.85	$88.85
% Premium Saving	- 91%	- 14%	- 14%

As indicated in the above chart, a motorist who carried collision insurance, as well as the statutory requirement

of $5,000 property damage may stand to realize a 14% property damage reduction according to the AIA statistics. But consider the motorist who did not carry first-party protection under the tort liability system, but relied upon his driving ability to indemnify himself against loss. To protect himself against damage to his automobile under a total no-fault plan he would be required to purchase first-party coverage at a premium rate of almost three times the amount ($32.67 as opposed to $85.85) he was previously paying for property damage insurance. This particular aspect manifests its inequity particularly against the lower income driver. Because he may not be able to afford increased premium payments, or because it is not economically feasible to pay high premium rates to insure an automobile that is three or four years old, the lower income driver is estopped from being compensated for damage to his car. In an era where one's livelihood may depend upon the availability of transportation, it is inconceivable that a program is proposed which effectively limits a person from being compensated for the loss of his automobile.

Aside from alleged cost reductions, no-fault proponents justify an imposition of a compulsory first-party reparations system on the grounds that it will provide a

complete system in which all accident victims will receive prompt compensation for economic loss. There is no doubt that a system of first-party reparations may result in faster payments of claims. However, there has been considerable debate as to whether the need for a compulsory no-fault system can be justified because the tort liability system is incomplete in that it is not designed to compensate the driver who causes the accident. Opponents point to "statistics that show that 85% of the American public have non-auto medical and hospital benefits available and that over 70% of the work force have wage continuation benefits available,"[61] and because of the widespread availability of collateral sources of compensation, there is not sufficient basis for imposition of a reparations system that prohibits an individual from recovering all elements of damages caused to him by the carelessness of another.

A further justification for the abrogation of the tort liability system is that the system is inequitable in terms of benefit distribution.[62] However, no-fault opponents maintain that while alleged deficiencies in the tort system are limited to but few, existing total no-fault programs contain provisions which adversely affect vast segments of society. Of course, the most frequent objection is the virtual exclusion of recovery of general damages for

disability, disfigurement, and pain merely because this element of damages is not adaptable to precise economical measurement.[63] The elimination of the right to recover general damages would reduce benefits presently available under the tort system to approximately one-half the eligible claimants under a no-fault system. But perhaps even more important, it is further contended that full recovery for tangible economic loss is precluded, in many instances, by total no-fault provisions which contain wage loss limitations.

Wage loss payments in a total no-fault concept are usually limited to 85% of monthly earnings up to a maximum of $750 or $1,000[64] a month. It has been suggested that this provision not only discriminates against claimants whose salary exceeds the statutory limit but also those who are in the lower income bracket. A 15% reduction for wage replacement was purportedly injected into the plans to permit consideration of tax liability which the claimant normally wouldn't receive anyway. But recent changes in federal tax structure make a 15% reduction totally unrealistic especially for lower income claimants. Reductions of wage replacements effectively deny full recovery to many claimants and particularly discriminate against those who need compensation the most--the lower income

citizen. The other obvious inequity resulting from the wage loss provisions relates to the maximum limit of $750 - $1,000 which prohibits a claimant whose salary exceeds this maximum from receiving full compensation of his loss. As the claimant is prohibited from suing in tort to obtain full recovery, he is compelled to absorb the difference between his actual earnings and the statutory limit as a loss, even though the damage may have been caused entirely by the negligence of another driver.

Furthermore, total no-fault plans do not adequately provide for loss of earning capacity as an element of personal injury claims. A person who is nonemployed or temporarily employed at wages less than his usual income will have his wage replacement income determined by the rate he was earning at the time of the accident. For the nonemployed driver (estimated to comprise 55% of the auto accident victims)[65] non-fault benefits would merely pay hospital and medical expenses, and even though an individual may not be able to seek gainful employment, he will not receive any compensation for loss of future earning capacity.

It would appear that based upon the preceding brief overview of the total no-fault concept, justification for the inception of a compulsory first-party system that eliminates tort liability is questionable and also that a

total no-fault plan raises more problems than it solves. Moreover, the concept does not resolve difficulties which primarily concern the public today. Despite reductions in benefits, no responsible assurances can be made that total no-fault will reduce existing premium rates. Only one[66] of the three plans adequately meet problems of premium cancellations and non-renewals which plague the motorist with increasing frequency. Finally, total no-fault does not sufficiently satisfy problems relating to premium surcharges and arbitrary classification systems presently used by insurers. In short, total no-fault plans are designed to produce neatly insurable risks, at the sacrifice of justice to the policyholder, as well as the accident victim.

Numerous limited no-fault plans have been proposed, and each such plan has countless variations from all others. However, there appears to be certain elements which are common to most limited no-fault systems, especially those patterned after the Massachusetts plan.[67] Limited no-fault plans compel a policyholder to purchase first-party bodily injury coverage designed to compensate for medical, hospital, rehabilitation, funeral or wage loss

expenses, or by the use of deductibles, become a self-insurer for those expenses. Tort liability is abrogated unless medical expenses exceed a statutory "threshold" limit ($500 in Massachusetts), or the injury results in certain specified conditions (permanent disfigurement, disability, etc.), or if the total amount of damages exceeds the limit of first party coverage ($2,000 in Massachusetts). An accident victim may not recover for general damages unless medical expenses exceed the threshold limit or he incurs a type of injury specified by the statute. If either of events occur, the victim may then sue in tort and recover general damages, contingent, of course, upon a determination of tort liability. In addition to compulsory first-party coverage, a motorist is required to carry residual liability insurance to meet state financial responsibility laws. To date, first party vehicular property damage (collision) has not been made compulsory, and tort actions are permissible to recover damage to property.

The basis for a limited no-fault system seems to primarily relate to reduction of expenses to the reparations system. By arbitrarily eliminating general

damages to accident victims who do not sustain a particular type of an injury or who do not have medical expenses exceeding the threshold limit, proponents of this concept predict substantial cost savings and, in turn, lower premium rates for policyholders. Quite expectedly, the limitation of general damages has met severe opposition. Condemning the concept as sacrificing equity for expediency, opponents point to possible inequitable situations which would arise:

> "A person suffering brain damage which will disable him for life would be entitled to sue for nothing more than the impairment of his earning capacity if his medical bills and other related expenses do not exceed $500. On the other hand, a person with a fractured thumb would be able to seek full compensation for all his general or indeterminate damages, including pain and suffering, even if his medical bills and associated expenses were quite small. Two persons could suffer the same type of injury and only one would be allowed to recover full compensation for his general or indeterminate damages, simply because he sought more expensive medical care or had a greater number of treatments for his injury."[68]

Although proponents of limited no-fault concepts indict the tort-based system as the culprit of existing insurance problems, it is difficult to accept justification for a reform program that contains the same elements it was designed to remedy. As the tort liability is not entirely abrogated, a limited no-fault system cannot be substantiated

on the grounds that it alleviates alleged problems of undercompensation of serious injury accident victims. Nor can it be said that the element of delay in the tort system is resolved, as claimants whose damages exceed first-party limits, as well as those who qualify to receive general damages, must turn to the tort process. Arbitrary rating classifications and premium surcharge practices are not challenged by most no-fault plans, and while policy terminations have merited some consideration, the proposals are far from adequate.[69]

Considerable publicity has been generated as to actual and predicted reductions of bodily injury premium rates relating to the Massachusetts experience with a limited no-fault plan. However, many observers have noted that experience data from Massachusetts must be discounted because of the unique situation which existed in that state prior to the enactment of no-fault legislation. As bodily injury liability insurance was compulsory and property damage was not, accident victims often instituted "nuisance claims" in which general damages were sought merely to get insurance companies to pay for damage to their automobile. Despite warnings that this complicated situation could not be translated to any other state because Massachusetts had the most expensive system in the

country in which bodily injury claims were close to three times the national frequency,[70] no-fault proponents have repeatedly emphasized this data as justification for introducing no-fault systems. However, it should be noted that while compulsory bodily injury insurance was reduced by 15%, a concurrent increase of 38.4% was granted for property damage coverage, and although substantial publicity has been generated which has intimated that the Massachusetts no-fault plan resulted in overall premium savings of 15%, in fact many policyholders realized premium increases of up to 35% because of the property damage rate increases. So that to date, most motorists in Massachusetts have yet to actually realize premium savings, even though the right to full recovery for damages has been restricted.

Recognizing that the proposed no-fault plans create more insurance problems than they solve, and further that the no-fault concept is based upon questionable grounds, an alternative solution has been formulated which directly resolves present insurance difficulties. Thorough research of possible insurance reforms and programs indicates that a State-operated insurance system is not only feasible, but necessary. As existing dissatisfaction of the general public stems from methods and practices of

the insurance component of the present reparations system, a program has been developed which enables the state of Maryland to offer its citizens a fair and adequate insurance program. Known as the Maryland Pay-As-You-Drive Plan (PAYD), a basic outline is as follows:

(1) A suggested title for legislation implementing this program, "The Maryland Automobile Insurance Highway Safety Program."

(2) To administer the program, a State corporation shall be instituted under the direction of the Department of Transportation with the recommendation that personnel presently employed by the Unsatisfied Claims and Judgment Fund be assimilated into the corporation.

(3) Every owner of a motor vehicle registered in Maryland and every driver with a Maryland driver's license shall be insured under the provisions of this program. Any person who fails to comply with the compulsory insurance provision of this program shall be subject to a fine not exceeding $1000 or imprisonment for a period not to exceed six months or both.

(4) Minimum insurance coverage shall consist of bodily injury liability coverage of $15,000 for any one person, $30,000 for any act or one occurrence, and property damage liability coverage of $5,000 for any one accident

or occurrence. First-party coverage for medical benefits up to $1,000 and uninsured motorist coverage up to the basic liability limits of 15-30-5 shall also be included as minimum insurance coverage.

(5) All minimum insurance coverage shall be issued by the State corporation administering this program.

(6) In addition to the minimum coverage, increased limits of $50,000 and $100,000 bodily injury and $10,000 property damage coverage or $100,000 and $300,000 bodily injury and $25,000 property damage may be acquired at the option of the individual.

(7) No policy of insurance issued by the state of Maryland shall be canceled or not renewed except upon revocation or suspension of an individual's driver's license. Legislation implementing this proposal should contain a recommendation that an individual may have a driver's license suspended based upon excessive accident involvement in which the individual's actions were determined to be the cause of such accidents.

(8) Insurance premiums for minimum insurance coverage shall be determined by three separate payments. When purchasing license plates for a private passenger automobile of $20 or $30 as determined by the Motor Vehicle Administration, an insurance premium of $15 on a $20 license

plate and $25 on a $30 license plate shall be paid. (For commercial vehicles license fees, see Schedule A.) On the purchase or renewal of a driver's license, a premium commensurate with the individual's driving record, based upon the traffic violation point system presently utilized by the Motor Vehicle Administration, will be paid. Finally, a premium of 2¢ per gallon of fuel purchased will be credited to the State insurance program.

(9) The following premium rate structure shall be utilized as the basis for determining driver's license insurance premiums:

Active Points	Premium	Active Points	Premium
0	20	7	370
1	40	8	460
2	70	9	560
3	110	10	670
4	160	11	790
5	220	12	920
6	290	Over 12	1,060

(10) Premiums for increased liability limits of $50,000 - $100,000 - $10,000 will be $10 and for $100,000 - $300,000 - $25,000, a $20 premium will be added to the "license plate" premium.

(11) All insurance premium rates shall be included as part of implementing legislation, subject only to amendment by the legislative process.

(12) The Maryland insurance program shall operate on a self-sustaining basis, financed entirely from insurance premium income.

(13) Tort liability shall remain the basis governing automobile accident reparations with the recommendation that the contributory negligence rule be replaced by a comparative negligence standard.

(14) Claims adjustment procedures will be established by the State Insurance Corporation to include the retention of private adjustment firms to investigate automobile accidents and determine a reasonable settlement of damages.

(15) A claims settlement board shall be established and in any accident in which the parties desire to have the issue of liability determined or in any case in which a claimant is not satisfied with the amount of compensation offered by the adjustment division, a hearing may be requested to resolve disputed issues. The claims settlement board will be required to schedule periodic hearings in the various geographical areas of the State to insure that a party will have disputed issues heard within thirty days after request for such a hearing. Should any party disagree with a finding

of the claims settlement board as to the amount of compensation or tort liability, that party may appeal the decision through proper judicial channels, and in a case where tort liability is not at issue, the claims settlement board may authorize the State Insurance Corporation to pay advance benefits in the amount of actual "out of pocket" expenses for medical, hospital, general wage loss and motor vehicle damage incurred by the accident victim to the date of the hearing.

(16) The Attorney General of Maryland shall provide legal counsel to the State Insurance Corporation, the cost of which shall be borne by the Insurance Fund.

A review of the Maryland-Pay-As-You-Drive Plan (PAYD) will reveal that the program successfully resolves the insurance problems which primarily concern the Maryland motorist. As noted previously, the high cost of insurance is an area in which public dissatisfaction has been vociferously expressed, and the PAYD Program responds by offering basic insurance coverage at significantly reduced premiums. This is possible because many of the necessary expenses of the insurance component of the present reparations system are either reduced or eliminated entirely. That portion of the premium dollar (estimated at 26%[71]) which presently is expended for salesmen's commissions, acquisition and advertising

costs, and profits will be virtually eliminated, permitting a reduction in insurance premiums. Further, all investment income which is derived from premium sources may be utilized to offset claims against the insurance fund and thereby maintain rates at reasonable levels. And by requiring all motorists to be insured by the same insurer, a government program is able to spread loss costs across the entire driving population. A comparison of existing premium rate structures with those proposed under the PAYD Program for identical insurance coverage of 15-30-5 liability insurance, $1,000 medical coverage, and uninsured motorist insurance, as applied to drivers with a record devoid of any violation points and average automobile mileage of 10,000 miles per year at 15 miles per gallon is as follows:

	Estimated Existing Premiums[72]		PAYD Premiums
Single person, male (16-20)	$335-550 $165-242	Baltimore City Remainder of State	$48.34
Man and wife, one automobile	$183-323 $ 80-163	Baltimore City Remainder of State	$68.34
Man and wife, one automobile and one teenager	$270-460 $130-158	Baltimore City Remainder of State	$88.34
Man and wife, two automobiles and two teenagers	$589-1049 $320-497	Baltimore City Remainder of State	$136.68

Obviously, the premium rates which are available under the PAYD Plan are far more favorable than existing rate structures

which insurers consistently maintain are less than adequate and should be raised. Also significant is that premium rates set forth by the provisions of the PAYD Plan are not speculative or projected, but are actual rates upon which an estimated operating budget was based and which would be maintained upon implementation of this program. With the establishment of definite and standard premium rates, the motorist has the advantage of being able to predetermine precisely what his insurance cost will be and why he is paying a specific rate. The PAYD Plan also permits easy payment of insurance premiums as minimal fees for license plate and driver's license premiums can be staggered so that the entire premium does not come due on one date and also by the payment of a few cents at a time for insurance coverage when purchasing gasoline. In that the PAYD Program significantly reduces premium costs for the overwhelming majority of Maryland motorists, a State-operated insurance program offers a practical solution to problems relating to the high cost of insurance.

Discriminatory rating classifications and premium surcharges due to accident involvement are other areas in which public discontent has been registered.[73] Simply stated, the PAYD Program eliminates both of these practices, which, aside from contributing to higher premium costs to selected

individuals, are founded upon fundamentally unfair principles. Based upon the premise that a person's insurance premium should be directly correlated to his driving record and not whether he is a member of a certain class of persons and, further, that classification data is not reliable in predicting that an individual will be involved in an automobile accident,[74] all discriminatory rating classifications based upon age, sex, race, marital status, occupation, and geographical area will be completely eliminated from underwriting procedures formulated by the PAYD Plan. In other words, every motorist would be considered a first-class driver unless his individual driving record proves him otherwise.

For reasons noted in previous material,[75] premium surcharges for accident involvement are abrogated. But when a driver demonstrates repeated carelessness and disregard of safe driving habits by operating a motor vehicle in a negligent manner so as to cause an excessive number of automobile accidents (to be determined by standards promulgated by the Department of Transportation), provisions of the PAYD Plan would permit suspension of his driver's license. Although a motorist has the right to be insured for as long as he is entitled to operate a motor vehicle, any motorist who demonstrates a total lack of driving

responsibility and who constitutes a menace to the safety of other drivers should be removed from the public highway.

Exclusive of full consumption, the only premium variable in the PAYD Program is directly proportioned to the driving record of the individual motorist. While the driver who has no traffic violation points on his driving record pays a minimal "driver's license" fee of $20, those drivers who consistently fail to observe traffic regulations and consequently are cited by law enforcement officials are penalized by having to pay insurance premium surcharges from $40-$1,060. However, it should be noted that the majority of Maryland drivers (88.8%)[76] would not be affected by this surcharge as they have no active points on their driving record. Only 9.9% have 1-3 points, 1.3% have 4-12 points, and .0015% have more than 12 violation points. As opposed to a no-fault concept which abolishes the element of individual responsibility, the PAYD Plan provides an incentive which rewards safe drivers and compels those who violate safety ordinances to pay a higher premium. This practice is entirely consistent with the basic premise of the PAYD Plan that a driver should pay insurance premium rates in direct proportion to his actual driving record, and should provide additional motivation for a driver to operate his motor vehicle in a safe and responsible manner.

Over half of the persons appearing before hearings conducted by the Maryland Department of Licensing and Regulation expressed dissatisfaction concerning policy terminations and resulting problems of either acquiring substitute insurance or being compelled to accept assigned risk coverage at substantially higher premium rates. The overwhelming number of those testifying felt that the terminations were completely arbitrary and unfair. Typical examples of complaints are as follows:

(1) "Basically, the problem began with a non-renewal letter ... because my agent quit the company, and instead of transferring my insurance policy to another agent, ... I was non-renewed. There were no claims against myself or my automobile; there were no traffic violations, and the driving record was completely clean. Now I fall into a category of people who have been turned down by insurance companies ... classified as a high risk and unable to obtain increased insurance coverage, but paying premium rates 27% higher than before."[77]

(2) "My wife had an accident, and now I have received notice I will have my insurance policy cancelled. Except for the accident, neither my wife nor I have any violations or wrecks. The only way I can get insurance now is by assigned risk which will be double what I'm paying now."[78]

(3) "I've been driving in Maryland since 1946 - no tickets, wrecks, no nothing until 1959 when I received a traffic ticket. But I used my insurance three times for towing in 1970 which amounted to a total of $43, and the company dropped me. I was turned over to assigned risk and my policy now costs me over $900."[79]

As the PAYD Plan eliminates any possibility of cancellation or non-renewal of insurance protection except upon suspension or revocation of an operator's license, the problems relating to arbitrary cancellations will cease to exist. As the availability of insurance will be predicated solely upon the individual's ability to retain a driver's permit, no one will be denied coverage because of another's deficient driving record. Furthermore, any need for the frequently abused assigned risk plan is completely abrogated as insurance

will be available to all licensed drivers.

To meet the public demand for a responsive system of insurance, the PAYD Plan not only resolves major ones of discontent such as high premium costs, classification systems, premium surcharges, and policy terminations but also recognizes other aspects in which the present system of insurance could be improved. By establishing a claims settlement board to determine accident liability or to hear appeals disputing the amount of settlement offered by the adjustment division, the PAYD Plan provides an alternative procedure aside from the judicial process in which a claimant may be assured of a timely, impartial hearing. Perhaps more important is the PAYD provision which permits advance payment for incurred "out of pocket" expenses where liability is not at issue. By allowing advance payments on a claim, no claimant will ever be compelled to settle for what he considers to be inadequate payment because of immediate financial hardship following an accident.

A system of compulsory insurance combined with residual uninsured motorist coverage assures the Maryland driver of a defendant who is financially responsible. As the purchase of insurance is a condition precedent to the issuance of vehicle license plates and drivers' permits, a feasible method of compulsory insurance is proposed in

which law enforcement officials may easily detect an uninsured vehicle simply by observing whether a motor vehicle has current license tags. To cover any residual situation such as an uninsured out-of-state driver or a hit-and-run accident, the PAYD Plan provides as part of the basic insurance first-party uninsured motorist coverage up to the prescribed 15-30-5 limits. In addition to uninsured motorist coverage, the substitution of a comparative negligence standard for the contributory negligence rule would remove still another obstacle to recovery of damage which occasionally confronts a deserving plaintiff.

First-party coverage or "no-fault" benefits for hospital and medical expenses up to $1000 are included as part of the basic minimum coverage of the PAYD Plan. This provision would cover all motorists insured under the PAYD Plan for hospital and medical expenses up to $1000 arising out of an automobile accident regardless of tort liability. The majority of Maryland motorists who sustain bodily injury incur medical loss of less than $1000 and it is estimated that over 95% of all accident victims would be fully reimbursed for hospital and medical expenses under

the PAYD Plan. The adoption of additional "no-fault" or first-party coverages is easily assimilated into the PAYD concept. Without disturbing an individual's right to a tort action, primary first-party insurance up to $2000 for wage loss, medical, rehabilitation, and funeral expenses may be offered at minimal additional premium rates. Although no pertinent credible criteria is available to establish a definitive rating structure, an estimated $15 premium per vehicle should provide adequate financial funding for this increased coverage.

As a final note, it should be recognized that the PAYD Plan is designed as a self-sustaining governmental unit financed entirely by funds derived from insurance income, and is not dependent upon collateral tax dollars. Based upon 1970 experience data, the following outline of estimated income and expenditures is submitted as necessary to finance a State-operated insurance program:

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STATEMENT OF PREMIUMS AND EXPENSES

Premiums:		
Vehicle Registrations - Schedule A	$ 47,921,032	
Operators' Licenses - Schedule B	58,951,050	
Fuel - Schedule C	32,607,689	
Increased Limits - Schedule D	15,836,770	
Total Premiums		$155,316,541
Expenses: Direct Losses Paid - Schedule E		
Auto Liability (B/I)	$ 73,254,876	
Auto Liability (P/D)	42,051,577	
Auto Medical Payments	2,689,046	
Uninsured Motorists	164,731	
	118,160,230	
Estimated UCJF Losses - Schedule F	2,260,557	
Total Direct Losses	120,420,787	
Loss Adjustment and Administrative Expenses - Schedule G	25,399,994	
Total Expenses	145,820,781	
Reserve for Contingencies	9,495,760	
Total Expenses and Reserve for Contingencies		$155,316,541

The basis for total premium income and individual insurance fees for private passenger and commercial vehicles may be found in Schedules A through D.[80] Vehicle registration income does not include any fees from State or local

government automobiles which presently are authorized the use of "gratis" license plates. As the cost for automobile insurance to State and local governments for maximum 100-300-25 coverage would only consist of the two cents per gallon premium, a substantial savings to government, estimated to be approximately 2.3 million dollars, would be realized.

Expenditures projected in the above statement are detailed in Schedules E through G,[81] allowing $9,495,760 for a reserve for contingencies. The loss adjustment and administrative expenses are derived from industry and various State accident funds experience data. However, it is expected that because the operation of various parts of the program, such as collecting of premiums and the issuance of insurance, is designed as an overlay upon existing agencies, the total cost to administer the plan may be less than projected. Past experience with workmen's compensation funds which pay out up to 114.4[82] percent of the premiums paid into the fund indicate that a State-operated insurance program can be efficiently and economically administered.

As problems connected with automobile insurance today are, for the most part, a product of insurance industry procedures and methods, and as proposed "no-fault"

reforms do nothing more than provide a new framework for exploitation of the insurance policyholder and accident victim, the Maryland PAYD concept is offered as a sound and reasonable alternative to assure every citizen the right of a responsive insurance system. By replacing the insurance component of the reparations system with a governmental unit primarily concerned with the public welfare, the basis for the widespread public discontent with automobile insurance will be alleviated.

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SCHEDULE A

REGISTRATION PREMIUMS

VEHICLE CLASS	DESCRIPTION	WEIGHT FACTOR	TOTAL REGISTRATIONS	PRESENT FEE	PROPOSED INSURANCE PREMIUM	REVENUE
A & DAV			1,617,891	20 - 30	15 - 25	27,481,426
ARL						
Long Term Lease (60%)			10,492	20 - 30	20 - 30	262,300
Daily Rentals Short Term Lease (40%)			6,995	20 - 30	100	699,500
B	Taxi Under Jurisdiction of Public Service Commission		1,529	60	300	458,700
	Not Under Jurisdiction of Public Service Commission		2,521	60	120	302,520
C	Funeral		621	40	40	24,840
D	Motorcycle		25,179	10	75	1,888,425
EPO	1/2 x 3/4 Ton	10,000 lb	185,268	25	25	4,631,700
	2501-4000	17,000	14,608	45	45	657,360
	4001-5000	20,000	9,107	70	70	637,490
	5001-6000	25,000	7,212	130	90	649,080
	6001-7500	32,000	5,265	180	120	631,800
	7501-9000	35,000	776	235	150	116,400
		45,000	313	280	165	51,645
		55,000	1,337	335	200	267,400

VEHICLE CLASS	DESCRIPTION	WEIGHT FACTOR	TOTAL REGISTRATION	PRESENT FEE	PROPOSED INSURANCE PREMIUM	REVENUE
ECH	1/2 x 3/4 Ton	10,000 lb	4,855	25	25	121,375
	2501-4000	17,000	2,463	45	45	110,835
	4001-5000	20,000	2,919	70	70	204,330
	5001-6000	25,000	3,075	130	90	276,750
	6001-7500	32,000	2,048	180	120	245,760
	7501-9000	35,000	368	235	150	55,200
		45,000	103	280	165	16,995
		55,000	652	335	200	130,400
EFT	Farm Trucks	10,000	20	25	25	500
		25,000	4,744	30	30	142,320
		28,000	2,835	40	40	113,400
		32,000	1,713	45	45	77,085
EPD	Dump Service	40,000	355	520	160	56,800
		45,000	5	585	165	825
		50,000	3	650	185	555
		55,000	22	715	200	4,400
		60,000	210	780	215	45,150
		65,000	935	845	240	224,400

VEHICLE CLASS	DESCRIPTION	WEIGHT FACTOR	TOTAL REGISTRATION	PRESENT FEE	PROPOSED INSURANCE PREMIUM	REVENUE
EHD	Dump Service	40,000	439	520	160	70,240
		45,000	1	585	165	165
		50,000	-	650	185	-
		55,000	18	715	200	3,600
		60,000	81	780	215	17,415
		65,000	1,474	845	240	353,760
EFA	Farm Area		117	1	1	117
F	Tractor					
	FA	40,000	1,344	175	160	215,040
	FB	50,000	1,956	215	185	361,860
	FC	65,000	5,878	330	240	1,410,720
	FD	73,280	5,055	400	280	1,415,400
FFT	Farm Tractor		7	5	5	35
G	Trailer	3,000	69,320	10	10	693,200
		5,000	7,743	20	20	154,860
		10,000	1,182	35	35	41,370
		1 Axle	4,262	40	40	170,480
		2 Axle	21,013	55	55	1,155,715
GDS	Dump Trailer		22	495	55	1,210
HSB	School Bus		3,871	20	20	77,420
HSC	School Bus Charter		727	40	40	29,080

VEHICLE CLASS	DESCRIPTION	WEIGHT FACTOR	TOTAL REGISTRATION	PRESENT FEE	PROPOSED INSURANCE PREMIUM	REVENUE
I	Charter Bus		148	150 - 280	Match Tag Fee	36,824
MFE	Motor Freight Franchise		972	EPO	EPO	91,841
MBP- MBZ	Motor Bus & Zone		997	70 - 280 & 5 Seat	Match Tag Fee	59,385
K	New Car Dealer		16,088		Match Tag Fee	124,072
L	Motorcycle Dealer		288		" " "	1,989
M	Used Car Dealer		6,944		" " "	61,709
N	Transporter		712		" " "	21,363
O	Finance Company		273		" " "	3,454
Y	Trailer Dealer		1,031		" " "	7,077
Temporary Tags			225,256	$10 Uninsured	$5 All Tags	1,126,280
						48,293,347
Less Self-Insured Registration Fees						(372,315-)
Net Insurance Funds Available - Registration Fees						47,921,032
	Total Registrations		2,293,658			
	Less Class G & GDS (trailers)		103,542			
	Less Temporary Tags		225,256			
Total	See Schedule D		1,964,860			

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SCHEDULE B

OPERATOR'S LICENSE PREMIUMS

Number	of	drivers	with	0	Active	Points	1,837,839	x $	20 =	$36,756,780
"	"	"	"	1	"	"	100,805	x	40 =	4,032,200
"	"	"	"	2	"	"	22,196	x	70 =	1,553,720
"	"	"	"	3	"	"	67,123	x	110 =	7,383,530
"	"	"	"	4	"	"	11,258	x	160 =	1,801,280
"	"	"	"	5	"	"	4,047	x	220 =	890,340
"	"	"	"	6	"	"	4,127	x	290 =	1,196,830
"	"	"	"	7	"	"	1,151	x	370 =	425,870
"	"	"	"	8	"	"	1,036	x	460 =	476,560
"	"	"	"	9	"	"	438	x	560 =	245,280
"	"	"	"	10	"	"	169	x	670 =	113,230
"	"	"	"	11	"	"	135	x	790 =	106,650
"	"	"	"	12	"	"	2,914	x	920 =	2,680,880
"	"	"	over	12	"	"	1,215	x	1,060 =	1,287,900
							2,054,453*			$58,951,05

NOTE: Maximum rate filed with Insurance Division under Assigned Risk is $1,695.

* Number of licensed drivers for year 1970 as determined by the Motor Vehicle Administration.

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SCHEDULE C

FUEL PREMIUMS

Revenue from a premium of 2¢ per gallon on motor fuel:

	No. of Gallons Taxed in 1970*	Revenue at 2¢ per gal.
Motor Vehicle Fuel Dealers	1,552,989,494	$31,059,790
Diesel Users and Sellers	55,081,527	1,101,631
Road Tax on Motor Carriers	22,313,423	446,268
Totals	1,630,384,444	$32,607,689

*Statistics for F/Y 1970 furnished by the Comptroller of the Treasury.

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SCHEDULE D

INCREASED LIMITS PREMIUMS

Bodily Injury Limits	*Percentage of Premiums Written	
15/30	42.1%	
20/40	2.8%)	
25/50	17.8% :	35.2%
50/100	14.6%)	
100/200	1.2%)	
100/300	18.8% :	22.7%
All Other	2.7%)	
	100.0%	

Anticipated Increased Limits Coverage:

$50,000/$100,000 B/I; $10,000 P/D

35.2% of 1,964,860** = 691,631 @ $10.00 = $ 6,916,310

$100,000/$300,000 B/I; $25,000 P/D

22.7% of 1,964,860** = 446,023 @ $20.00 = 8,920,460

Total Premiums $15,836,770

* Statistics furnished by Insurance Rating Board.
** Total 1970 Vehicle Registrations (See Schedule A).

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SCHEDULE E

DIRECT LOSSES PAID

1970*

	Direct Premiums Written	Direct Losses Paid	Retention Factor
Auto Liability (BI)	$127,864,699.03	$ 73,254,875.74	+42.8%
Auto Liability (PD)	58,611,502.13	42,051,577.29	+28.3%
Auto Medical Payments	11,107,853.63	2,689,045.84	+74.0%
Uninsured Motorists	1,100,568.57	164,731.21	+85.1%
Totals	$198,684,623.36	$118,160,230.08	

* Statistical Report on Automobile Insurance Coverage in Maryland compiled from Annual Reports of the State Insurance Department of Maryland.

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SCHEDULE F

UCJ FUND*

1970 - 1971 Claim Payments		$5,460,282.84
Hit and Run Motorists	11.2%	
Out-of-State Motorists	22.0%	
Undetermined	8.2%	
	41.4%	

41.4% of $5,460,282.84 = $2,260,557

* Information, statistics and data furnished by UCJ Fund.

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SCHEDULE G

LOSS ADJUSTMENT AND ADMINISTRATIVE EXPENSES

Loss Adjustment Expense

	1970 Direct Premiums Written in Maryland		Percentage*	Totals
B/I	$127,864,699	x	14.22	$18,182,360
U/M	1,100,569	x	14.22	156,501
M/P	11,107,854	x	1.50	166,618
P/D	58,611,502	x	10.91	6,394,515
	$198,684,624			$24,899,994

Administrative Expense

Additional Cost for Renewal of Annual Driver's License	500,000
	$25,399,994

* Statistical percentage based on 308 companies writing automobile insurance in Maryland furnished by actuaries of the Insurance Division of the State of Maryland.

FOOTNOTES

[1]American Insurance Association, Report of the Special Committee to Study and Evaluate the Keeton-O'Connell Basic Protection Plan and Automobile Accident Reparations (New York, 1968), p. 1-2.

[2]The Maryland Association of Insurance Agents and the Tri State Mutual Association, "More Problems Created by 'Solution' Proposal for Auto Insurance," The Daily Record, November 9, 1971, p. 7.

[3]Richard Stewart, Automobile Insurance...For Whose Benefit? (February 12, 1970), p. 22.

[4]Jeffrey O'Connell, "The Road Ahead: For Automobile Insurance," Connecticut Law Review, Vol. 1 (1968), pp. 22-23.

[5]Statement by Mark Martin, Chairman of the Board, Defense Research Institute (presented to United States Subcommittee on Antitrust and Monopoly Legislation, December 16, 1969, p. 5).

[6]Ibid.

[7]"Second DRI Study Shows Court Delay Is Limited Problem," For the Defense, Vol. 9 (Dec. 1968), p. 74.

[8]Frederick W. Invernizzi, Annual Report 1969-1970, Administrative Office of the Courts, State of Maryland (1970), p. 29.

[9]Ibid., p. 30.

[10]Ibid., p. 35.

[11]Table 2 - "Number of Persons Killed and Seriously Injured Receiving Tort Settlement and Relationship of Settlement to Total Economic Loss by Total Economic Loss," Congressional Record, Vol. 117, No. 120 (1971).

[12]U. S. Department of Transportation, Public Attitudes Toward Auto Insurance (Washington, 1970).

[13]Ibid., p. 122.

[14] American Insurance Association Report, p. 4.

[15] Ibid., p. 7.

[16] Testimony of Craig Spangenburg, Chairman of the Automobile Reparations Committee of the American Trial Lawyers Association (before the U. S. Senate Commerce Committee Hearing, October 13, 1971).

[17] State Farm Insurance Companies, Report of Opinion Survey of 11.1 Million Automobile Insurance Policyholders of the State Farm Insurance Companies (prepared for U. S. Senate Antitrust and Monopoly Subcommittee, December 9, 1969).

[18] Public Attitudes.

[19] Ibid., Table III-1, p. 18.

[20] Arkansas, Georgia, Hawaii, Massachusetts, Maine, Minnesota, Mississippi, Nebraska, New Hampshire, South Dakota, Wisconsin.

[21] Statement of Vestal Lemmon, President, National Independent Insurers (before U. S. Senate Commerce Committee, May 7, 1971).

[22] Statement by R. G. Chilcott, Vice President, Nationwide Insurance Companies (before U. S. Senate Commerce Committee, May 11, 1971).

[23] Defense Research Institute, An Analysis and Critique of an Automobile Insurance Proposal Prepared for Study and Comment by the American Insurance Association (Milwaukee, Wisconsin 1969), pp. 8-9.

[24] Ralph D. Semerod, "Assumptions vrs. Facts," Trial Magazine (October/November, 1970), p. 16.

[25] U. S. Department of Transportation, Motor Vehicle Crash Losses and Their Compensation in the United States (Washington, 1971), p. 36.

[26] Jim Montgomery, "Puerto Ricans Applaud No-Fault Car Insurance Initiated Last Year," The Wall Street Journal, May 20, 1971, p. 1.

[27] U. S. Department of Transportation, Economic Consequences of Automobile Accident Injuries (Washington, 1970), p. 19.

[28]Motor Vehicle Crash Losses, p. 41.

[29]Economic Consequences, p. 19.

[30]Ibid., p. 19.

[31]U. S. Department of Transportation, Automobile Personal Injury Claims (Washington, 1970), pp. 19, 32, 53.

[32]Ibid., p. 53.

[33]Donald Casciato, "DOT Accused of Disseminating False Automobile Accident Information," The Journal of Commerce, November 18, 1971, p. 3.

[34]500,000/4,200,000 = 12%. Total persons injured in 1967 estimated to be 4,200,000. (U. S. Department of Commerce, Statistical Abstract of the United States (1969, p. 551). Total persons seriously injured or killed in 1967 estimated to be 500,000. (Economic Consequences, pp. 64-65.)

[35]32,500/1,060,000 = 3%. Estimated that 45% of total persons injured or killed compensated by tort settlement process which would be 1,060,000. (Economic Consequences, p. 3). Approximately 32,500 seriously injured or killed under-compensated. (Economic Consequences, Table FS[1] at p. 250.)

[36]Motor Vehicle Crash Losses, pp. 9-10.

[37]National Association of Insurance Commissioners, Automobile Insurance Study Background Memorandum in Report of the Special Committee on Automobile Insurance Problems (1969), p. 100.

[38]H. Ross, Settled Out of Court: A Sociological Study of Insurance Claims (1970), Ch. 1.

[39]T. Lee Hughes, "Insurer Sees 25% Drop in Rates Under No-Fault," The News American, October 15, 1971, p. C-1.

[40]Motor Vehicle Crash Losses, Table 2 at p. 6.

[41]Economic Consequences, Table 40FS[1] at p. 322.

[42]Public Attitudes, Table VI-S2 at p. 122.

[43]State Farm Insurance Companies, Report of Opinion Survey of 11.1 Million Automobile Insurance Policyholders of the State Farm Insurance Companies (prepared for U. S. Senate Antitrust and Monopoly Subcommittee, December 9, 1969).

[44]Statement of George H. Kline, Vice President, Allstate Insurance Companies (before U. S. Senate Antitrust and Monopoly Subcommittee, July 24, 1968).

[45]Motor Vehicle Crash Losses.

[46]Senator W. G. Magnuson, "A Forecast," Trial Magazine, October/November 1970, p. 28.

[47]State Farm Opinion Survey.

[48]The Insurance Industry: Hearings before the Subcommittee on Antitrust and Monopoly of the Committee on the Judiciary, U. S. Senate, 90th Congress, Volume 14 (July 9, 19, 22, 23 and 24, 1968), pp. 8282-8283.

[49]Public Attitudes, pp. 35-40.

[50]Ibid., p. 39.

[51]Motor Vehicle Crash Losses, p. 27.

[52]"93% of Motorists in Maryland Have No Trouble Buying Auto Insurance," The Daily Record, August 14, 1971, p. 1.

[53]"Aetna Life & Casualty Reports Operating Earnings Increase 44%," The Journal of Commerce, August 2, 1971, p. 2.

[54]Dennis V. Waite, "State Farm Auto Rates May Drop," The News American, August 6, 1971, p. C-8.

[55]See Appendices A, B, and C.

[56]"Travelers Chief Says--No-Fault No Panacea," The Journal of Commerce, October 26, 1971, p. 5.

[57]Motor Vehicle Crash Losses, Table 2 at p. 6.

[58]William Montgomery, "Expanding Insurance Markets," The Spectator, November 1968, p. 57.

[59] "Table 2--Where Each $1 of Automobile Bodily Injury Liability Insurance Premium Goes" (February 24, 1971), in the Congressional Record, Vol. 117, No. 22, p. 1834.

[60] American Insurance Association Report, Exhibit I, Sheet I, at p. 17.

[61] Speech by Andre Maisponpierre, A.M.I.A., Vice President (presented to Independent Mutual Insurance Agents of New York, September 1968).

[62] Supra, pp. 19-22.

[63] Supra., pp. 15-18.

[64] American Insurance Association, Complete Personal Protection Automobile Insurance Plan; Committee on Commerce, Committee Print No. 1: S945.

[65] M. Stanley Hughey, "The Cost of a Revolution," Trial Magazine, October/November 1970, p. 17.

[66] Committee on Commerce, Committee Print No. 1: S945.

[67] See Appendix B.

[68] James D. Ghiardi, John J. Kircher, "Automobile Insurance: An Analysis of the Massachusetts Plan," Syracuse Law Review, Volume 21, No. 4, pp. 1138-39.

[69] See Appendix B.

[70] Ibid.

[71] Table 2, Congressional Record, February 24, 1971, p. 1834.

[72] Rating samples compiled by Insurance Division, Maryland Department of Licensing and Regulation, June 29, 1971, July 8, 1971.

[73] Supra, pp. 31-34.

[74] Supra, p. 32.

[75] Supra, pp. 31-34.

[76] Infra., p. 76.

[77] Testimony of R. Drechsler (before Public Insurance Hearing #1, Conducted by the Maryland Department of Licensing and Regulation, June 9, 1971).

[78] Testimony of E. Butler (before Public Insurance Hearing #2, Conducted by the Maryland Department of Licensing and Regulation, July 23, 1971).

[79] Testimony of J. Ayres (before Public Insurance Hearing #2, Conducted by the Maryland Department of Licensing and Regulation, July 23, 1971).

[80] Infra., pp. 72-78.

[81] Infra., pp. 79-81.

[82] Statistics Furnished by B. T. Thomas, Managerial Director, Workmen's Compensation Fund, State of West Virginia.

APPENDIX A

STAFF ANALYSIS

OF

COMMITTEE PRINT ONE,

U. S. SENATE BILL 945

Submitted to:

John R. Jewell
Secretary of Licensing and Regulation

SUMMARY OF COMMITTEE PRINT ONE
OF S.945
AND
BASIC OBJECTIONS TO NO-FAULT INSURANCE

Basically S.945 would create an essentially restructured automobile reparations system. Tort liability arising out of automobile accidents would be eliminated. A person injured in an automobile accident would seek reparations from his own insurance company (first-party insurance) cr the insurance company of the owner of the vehicle in which he was injured. Committee Print One of S.945, a revision of S.945 of February 24, 1971, meets head on most of the objections voiced against the February draft, but still does not provide a comprehensive solution to the nation's insurance problems. A summary of Committee Print One and a comment on the basic objections thereto is the subject of this brief.

The essence of Committee Print One is as follows:

NO-FAULT REQUIRED

CP1 requires no-fault motor insurance as a condition precedent to using a motor vehicle on the public highways.

TORT EXEMPTION (§3)

No person shall be liable for tort damages of <u>any nature</u> arising out of ownership, maintenance, operation, or use of

a motor vehicle unless such person is engaging in criminal conduct as defined in §2(20) of the bill. Note that CP1 has eliminated the previous possibility of a tort action in cases of catastrophic harm as found in the February draft. CP1 is strictly a no-fault concept!

CONDITIONS OF OPERATION AND REGISTRATION (§4)

This section requires all motorists to be insured under a qualifying no-fault policy or provide a surety bond or proof as a self-insurer equal to the minimum limits of a no-fault policy. Subsection 2(b) requires all states to adopt no-fault insurance.

INSURANCE REQUIREMENTS (§5)

A qualifying no-fault policy must contain the following provisions:

A. Without regard to fault, the insurer must pay the net economic loss for an injury or death of the insured or the occupants of his motor vehicle.

1. Net economic loss is defined in §2(15) as the economic loss reduced by the amount of any benefit received from the following sources:

a. Public health insurance.

b. Any private insurance plan making its benefits primary to a no-fault policy.

Note that CP1 is different from the February draft in that any private insurance policy must in itself make its coverage primary to the no-fault coverage before no-fault funds may be denied to the claimant. The February draft automatically forced the claimant to use his collateral insurance before drawing on no-fault funds. But the objection still remains that by making public health primary to no-fault, the government in effect would be underwriting a substantial portion of claims against the nation's insurers.

2. Economic loss as defined in §2(13) is:

a. Reasonable medical expenses.

b. Rehabilitation and occupational therapy.

c. Wage loss up to $1,000 a month until the injured party can resume gainful employment.

Note that there is no wage loss limitation as there was in the previous draft which contained a wage loss ceiling of $30,000.

B. Section 5(a)2 specifically disallows any claim made by occupants of a motor vehicle other

than those in the insured motor vehicle and also disallows any claim made by an operator who is engaging in criminal conduct at the time. Section 5(a)4 permits non-occupants such as pedestrians to be compensated by the insurer of any vehicle which is involved in the accident.

C. Section 5(a)5 prohibits any benefits paid to claimants to be applied to attorney's fees except where there is a disputed claim between claimant and insurer as explained by §8(a). If there is such a disputed claim, then the fees may be arranged for on a contingency basis of 25%, or a claim may be filed for reasonable attorney's fees against the insurer.

D. In addition to the benefits provided for in section 5(a), 5(b) requires the insurer to compensate any claimant who is not an owner of a motor vehicle or a spouse or dependent of an owner, <u>damage other than economic loss</u>.

1. <u>Damage other than economic loss</u> is defined in §2(17) as:

a. Tangible damage in excess of economic loss.

b. Intangible damage, characterized also as pain and suffering or general damage.

Furthermore, this section requires the insurer to compensate for damage to any property other than a motor vehicle in use arising out of a motor vehicle accident.

E. The following optional coverage must be offered by the insurers as part of their total policy as per §5(c):

1. Provisions for compensation of property damage to insured's motor vehicle.

2. Provisions for damage other than economic loss to be made available to insured.

Of course, these options will be available at increased premiums, and also there is a deferred payment schedule which prohibits a claimant from submitting a claim until the last periodic payment for net economic loss has been made or until a period of three years from the time of the injury has elapsed, whichever is first.

F. The last significant aspect of section 5 is found in subsection (g) which governs acceptances, cancellations, and refusals to renew policies.

1. An application may not be rejected by the insurer unless the principal operator does not have a license or the application

is not accompanied by a reasonable portion of the premium.

2. Once issued, a no-fault policy may not be cancelled or refused renewal except if the insured's driver's license is suspended or if there is a failure to pay the insurance premium.

3. An insurer may reject or refuse to accept additional policies if the State insurance supervisory authority deems that the financial security of the insurer is impaired by writing additional policies.

UNIFORM STATISTICAL PLAN AND PRICE INFORMATION (S6)

The Secretary charged with administering S.945 is empowered under this section to promulgate a common, uniform statistical plan for the compilation of claims and loss experience data for each coverage. Such a plan must then be followed by the insurers writing qualifying no-fault insurance, and this data will be made available to the Secretary so that he may consult with the State regulatory agencies and provide the general public with comparison figures. In compiling the data, insurers are not permitted to act "in concert" or to include data pertinent to expenses for adjusting losses, underwriting expenses, or general administration expenses.

ASSIGNED CLAIMS PLAN (§7)

All insurers, including a self-insurer, shall be required to participate in the assigned claims plan. In the event that a person is injured or killed in an automobile accident or by a vehicle which is uninsured (and that person is not responsible for the fact that the vehicle is uninsured), the injured victim may seek compensation from the assigned claims program which is to be organized by the State. Where the victim has no insurance company to turn to (because the vehicle was uninsured or the insurance company was insolvent), the claim would be financed by assessing insurance companies in that State on the basis of the amount of premium volume.

COMMENT ON COMMITTEE PRINT ONE, S.945

The purpose of this comment is not to examine the constitutionality or the moral inequities that may exist in the "National No-Fault Motor Vehicle Insurance Act," but rather to determine if the bill can successfully accomplish the purposes for which it was written.

The proponents of S.945 advocate the passage of the "National No-Fault Motor Vehicle Insurance Act" for the following reasons:

A. To alleviate the overburdened court docket which exists in most cities due to a backlog of not only civil, but criminal cases.

B. To reduce the amount of legal fees and expenses of litigation by eliminating the tort liability concept as related to automobile accidents.

C. To seek a reasonable parity between the economic loss suffered by the claimant and the actual dollar amount he receives in satisfaction of his claim.

D. To balance the inequities which exist in the percentage of economic loss paid to educated claimants compared to the percentage paid to those with little or no education.

E. To increase the proportion of the premium dollar available for payment of a claimant's losses.

F. To reduce or stabilize the amount of premium dollar paid by the consumer for insurance needs.

That there exists a problem of overwhelming court congestion and overcrowded court dockets cannot be disputed. However, this reason in itself cannot be used as a sole justification for a departure from the established principles of personal responsibility for one's acts to a system where the burden of

responsibility for traffic accidents is shifted from the guilty to the innocent. Moreover, the trial of automobile accident cases is but one factor in crowded dockets. The major culprit appears to be the increasing number of criminal actions resulting from the increasing crime rate. A study by the Federal Judicial Center points out that motor vehicle litigation requires 11.4% of judge time in Federal district courts and approximately 17% in state courts of general jurisdiction.[1] A point to be considered here would be what percentage of that judge time is utilized for determining "fault" and what percentage is used for litigating "damages," as S.945, §8 permits a claimant to retain an attorney and file suit if there is a disputed claim between the claimant and the insurer. It appears unlikely that insurers will be more responsive to claims under a no-fault system than under the present tort liability system, and that the judge time utilized for determining "damages" will be as great, if not greater, than that presently needed. The obvious fact that all parties to an accident have a claim against an insurer raises the possibility that disputed claim actions may even increase the time of court litigation beyond the figures cited in the Federal Judicial Study. To advocate that S.945 would result in less litigation and court time expended for settling automobile accident claims is a proposition based on conjecture and assumptions that are entirely untested,

[1]Congressional Record, Vol. 117, No. 22, February 24, 1971, S 1827.

and should not be considered as a rationale basis for proposing its adoption into law.

A recurring argument that seems to dominate the thinking of most no-fault proponents is that by eliminating tort liability and the need for attorneys to litigate this issue, the innocent victim of an automobile accident will derive substantially higher benefits because of the absence of attorney's fees. A total of 9.5 billion dollars of auto insurance premiums was paid in 1970 and trial lawyers' fees for representing accident clients amounted to 1 billion dollars or about 10.5% of the premium dollar.[2] Trial lawyers' fees coupled with insurers' lawyers' retainers and court costs totaled 1.5 billion dollars or about 15.8% of the premium dollar. It appears, however, that CPl could do little, if anything at all, to alleviate expenses of litigation and make available a greater percentage of the premium dollar to be paid in benefits. An important factor to be considered in assessing litigation expenses as relating to CPl would be that a large number of accident victims who could not collect under the present liability system because they were "at fault" would be entitled to compensation under the no-fault concept. A reasonable assumption (because most accidents are multi-car collisions) would be that claims should at least double. (Preliminary figures from Massachusetts

[2]Enclosure 1.

indicate a reduction of 50% in the amount of claims, but most observers agree that this is an illusionary number as claimants are withholding claims awaiting a Supreme Court decision on the constitutionality of the Massachusetts no-fault bill.) Assuming that claims will double under the no-fault concept, experience data is needed to determine what percentage of these claims will be disputed. Where there is a disputed claim, §8 of CPl permits a claimant to retain an attorney to represent him and submit a claim to the insurer for "reasonable attorney's fees" and court costs. Or the claimant may by authority of §8(b) enter into a contingency arrangement with an attorney of not more than 25% of the settlement. The critical figure would be what percentage of the total claims will be disputed. If one half of the total claims are disputed (and assuming twice as many claims are submitted to insurers) virtually the same situation relating to litigation would exist under the no-fault system as under the present liability concept, and the total cost of litigation would not be reduced in any substantial manner. As CPl permits a claimant to contest a settlement of a claim, and present the cost of doing so to the insurer, a reasonable conclusion would be that a large number or percentage of claims will be disputed unless there would be a substantial change in the methods of

settlement presently used by most insurers. Note also that if a claimant elects to use 8(a) as a basis for retaining an attorney, the expense is directly added to the insurer's overhead, thereby directly reducing the amount of premium dollars available for payment of benefits.

No-fault proponents invariably charge that the tort liability system does not adequately compensate seriously injured accident victims for their economic loss. The following table is most often asserted for the basis of their contention.

TABLE 1 - NUMBER OF PERSONS KILLED AND SERIOUSLY INJURED RECEIVING TORT SETTLEMENT AND RELATIONSHIP OF SETTLEMENT TO TOTAL ECONOMIC LOSS BY TOTAL ECONOMIC LOSS[3]

Amount of Total Economic Loss	Number of Persons	Average Loss	Averages Received from Tort Settlement After Legal Costs	Percent Received To Loss
$ 1 to $ 999	37,318	$ 634	$1,408	222
$ 1,000 to $2,499	71,500	$1,678	$2,399	143
$ 2,500 to $9,999	72,796	$4,624	$4,052	88
$10,000 or more	32,501	$52,659	$9,048	17
Total	214,115	$10,326	$3,789	37

[3]Congressional Record, Vol. 117, No. 120, July 29, 1971, S.12464.

Table 1 quite clearly reveals a deficit in the ratio of economic loss as compared to the average settlement made in claims involving an economic loss of $2,500 or more. That there exists this inequity in the present system of compensation cannot be denied and reform legislation should be devised to correct this problem. However, note that average economic loss is computed by totaling wage and medical loss, property damage, and future earnings of fatality victims. While there is no data available at this time to determine what the percentage of the future earnings of fatality victims is in relation to the total amount of economic loss proposed in Table 1, there is a strong possibility that this type of claim (future earnings of fatality victims) would be the major uncompensated area. Tort lawyers have consistently recognized that juries, on the basis that fatality dependents will be the recipients of life insurance and other means of compensation, have invariably undercompensated fatality survivors. A review of what settlements were paid to survivors supplemented with other collateral compensation might realign the economic loss/settlement ratio and present a more acceptable compensation picture.

Proponents of CP1 claim that a most attractive feature of this bill is that it would alleviate the inequities existing

in the present compensation system. Assuming that statement to be valid, it would appear that the economic factor of the cost of compensating claimants would be prohibitive. Using Table 1 as a basis for consideration for adjusting claims equitably, the following information is provided:

EQUITABLE COMPENSATION TO
SERIOUSLY INJURED OR KILLED ACCIDENT VICTIMS WOULD
INCREASE COST TO INSURERS BY:

$ 1 to $ 999	-$ 28,884,132
$ 1,000 to $2,499	-$ 51,551,500
$ 2,500 to $9,999	+$ 41,639,312
$10,000 or more	+$1,417,401,111
NET INCREASE:	$1,378,604,791

If every "innocent victim" had received their actual economic loss, the additional expense to insurers would have been almost 1.4 billion dollars. The data source for this information, the Department of Transportation Economic Consequences of Auto Accidents Study (1967), indicates that there were 280,015 other victims who received no settlements as they were "at fault" under the present liability system, yet these victims would qualify for benefits under CP1 of S.945. While the $10,236 average loss from Table 1 is not a true statistical average, it is possible to use this figure based on the data experience of the 214,115 innocent victims; and estimate that to compensate the "at

fault" victims, the cost to insurers would have been about $2,891,833,890. To justly compensate both the "innocent" and "at fault" parties, the cost would approximate an increase of about 4.3 billion dollars. And it should be noted that at this point, the Department of Transportation figures are predicated only on those victims seriously injured or killed and in 1967 this represented only about 1/5 of the total settlements paid by insurers. About 4 billion dollars of insurance benefits was paid to other than seriously injured or killed victims, and making the rough calculation that if benefits were paid equally to "at fault," as well as to "innocent" victims, another 4 billion dollars would be added to insurers' cost of compensating claimants. An estimation of the net increase to implement a no-fault system that would justly compensate its claimants would be about 8.3 billion dollars. The total compensable loss would then be 5.1 (paid out by insurers in 1967) plus 8.3 (net increase of no-fault benefits) or 13.4 billion dollars. It is obvious that the claim by advocates of CPI that no-fault will permit equitable compensation to all claimants just is not economically possible. Even if the bill could reduce the litigation expenses, there simply is not enough insurance premium dollars to finance first party insurance, and at the same time, purport to offer

most of the unlimited benefits as found in CP1. It is sufficient to mention that 9.5 billion dollars was paid in premiums in 1970 and proponents of CP1 allege to be able to pay about 13 billion dollars in claims using a no-fault concept. Not even considering administration costs, sales commissions, and other overhead expenses, it is evident that such a program could not be administered unless there would be a drastic premium increase to the insureds or unless a mandatory public health bill would be enacted, in which case the taxpayer would, in effect, be subsidizing private insurance profits.

SUMMARY

These comments have been specially addressed to Committee Print One of S.945, July 1, 1971, a bill which basically makes available all methods of compensation under the present tort system to all accident victims. Though not addressing every problem, it appears (to one with a limited expertise of insurance economics) that the primary weakness in the bill is that if compensation is distributed to claimants as asserted by the bill's advocates, an economic void exists between compensatory loss and the amount of premium dollars available to compensate accident victims. It would be most advantageous for opponents of this proposed legislation to retain economic experts to more thoroughly examine its feasibility.

AUTO LIABILITY INSURANCE
1970
(In Billions)

	Personal Injury		Property Damage		Total
Premiums		$6.6		$2.9	$9.5
Less: Insurance Costs-					
Overhead and Adjusting	$1.4		$0.8		
Sales Commissions	1.0	2.4	0.3	1.1	3.5
		4.2		1.8	6.0
Less: Legal Costs					
Fees					
Trial Lawyers	1.0		---		
Insurance Lawyers	0.3		---		
Litigation Expenses	0.1	1.4	---	0.1	1.5
Net Compensation		2.8		1.7**	4.5
Compensable Economic Loss*		6.8		6.3	13.1

*Wage and medical loss, future earnings of fatality victims with dependent survivors and property damage.

**Auto collision insurance provided another $2.1 billion of compensation for property loss.

SOURCE: U. S. Senate Antitrust and Monopoly Subcommittee. Derived from: Motor Vehicle Crash Losses and Their Compensation in the United States, Department of Transportation (1971), Table 2 at p. 6--adjusted by Bureau of Labor Statistics' price and wage indexes to 1970; Best's Aggregates and Averages, 31st Annual Edition (1970); Automobile Personal Injury Claims, Department of Transportation, pp. 73, 80 (1970); Automobile Accident Litigation, Department of Transportation, p. 7 (1970); and Best's Review (Prop/Liab.), July, 1971.

APPENDIX B

STAFF ANALYSIS

OF

THE MASSACHUSETTS NO-FAULT

INSURANCE PLAN

Submitted to:

John P. Jewell
Secretary of Licensing and Regulation

SUMMARY OF

THE MASSACHUSETTS NO-FAULT INSURANCE PLAN

On August 13, 1970, the Commonwealth of Massachusetts enacted into law St. 1960, c. 670, "AN ACT providing for compulsory personal injury protection for all registered motor vehicles. Defining such protection, restricting the right to claim damages for pain and suffering in certain actions of tort. Regulating further the premium charges for compulsory automobile insurance, and amending certain laws relating thereto." St. 1970, c. 744 was approved on August 24, 1970, as "AN ACT relative to the renewal of certain motor vehicle insurance policies and providing for the suspension of the license of insurance companies refusing to issue or renew compulsory motor vehicle liability insurance policies." The Massachusetts No-Fault Plan has been described as a "limited" no-fault concept and a summary of this legislation follows:

NO FAULT COVERAGE MANDATORY [Sect. 4]

Every motor vehicle policy and motor vehicle bond issued or executed in this Commonwealth shall provide personal injury protection (P.C.P.) benefits as defined by this act.

PAYMENT OF P.I.P. BENEFITS [Sect. 3]

Without regard to fault, P.I.P. benefits will be paid to the named insured, members of the insured's household,

any authorized operator or occupant of the insured's motor vehicle or any pedestrian involved in any motor vehicle accident occurring within the Commonwealth.

EXCLUSIONS [Sect. 2]

Insurers may exclude a person from P.I.P. benefits if such person's conduct contributed to his injury in any of the following ways while operating a motor vehicle:

(1) While under the influence of alcohol or a narcotic drug.

(2) While committing a felony of seeking to avoid lawful apprehension or arrest.

(3) With the specific intent and causing injury or damage to himself or others.

P.I.P. BENEFITS [Sect. 2]

Personal injury protection benefits shall provide payment for all reasonable expenses incurred within two years from the date of an automobile accident for each eligible injured person up to a $2,000 total limit for:

(1) Medical, surgical, x-ray, dental, ambulance, hospital, nursing, funeral expenses and prosthetic devices.

(2) Wage and salary loss up to 75% of a person's weekly wage or salary if such person is not eligible for collateral wage continuation program or an amount sufficient to raise the total supplement to 75% of the person's weekly wage if he is eligible for a wage continuation plan. An unemployed accident victim may receive an amount equal to the diminution of earning power.

(3) Payment made to others, not members of the injured person's household, for necessary services that the injured person would have been able to perform but for the automobile accident.

OPTIONAL P.I.P. DEDUCTIONS [Sect. 4]

Although personal injury protection is mandatory, the insured may at his option request a policy endorsement that modifies, reduces, or eliminates the amount of coverage. Such "deductibles" may be issued in the amounts of $250, $500, $750 and $1,000 at corresponding premium discounts. The optional "deductibles" not only reduces the maximum coverage of $2,000 by the amount purchased but also benefits will be paid only for losses incurred in excess of that amount. Such "deductibles" shall only apply to the named insured and members of the insured's household, not to other occupants or pedestrians.

TORT EXEMPTION [Sect. 4]

Every owner, registrant, operator or occupant of a motor vehicle to which P.I.P. benefits apply who would otherwise be liable in tort, and any person or organization legally responsible for his acts or omissions, is made exempt from tort liability for damages of bodily injury or death arising out of an automobile accident (except as provided in Section 5) to the extent that the injured party is entitled to recover under P.I.P. benefits or would be entitled to recover had he or someone for him not purchased a "deductible". No such tort exemption shall exist outside the Commonwealth.

TORT LIABILITY [Sect. 5]

A person injured in an automobile accident may assert tort liability and recover damages for pain and suffering, including mental suffering for such an injury only if:

(1) Expenses for medical, surgical, x-ray, dental, prosthetic devices, ambulance, hospital, nursing or funeral expenses are determined to be in excess of $500; or

(2) Such injury causes death; or consists in whole or in part of loss of a body member: consists in whole or in part of permanent or serious disfigurement, or results in loss of hearing or a fracture.

PAYMENT OF P.I.P. BENEFITS [Sect. 4]

P.I.P. benefits due from an insurer shall be due and payable as loss accrues, upon reasonable proof of such loss expenses. An insurer may agree to a lump sum settlement with a claimant discharging all future liability. In any case where benefits due and payable for more than 30 days, any unpaid party shall be deemed a party to a contract and may commence on action in contract for payments of amounts due.

PAYMENT OF P.I.P. BENEFITS IN TORT ACTION [Sect. 4]

If any person claiming or entitled to P.I.P. benefits brings a tort action against the owner or person responsible for the operation of the motor vehicle, such benefits shall not become due and payable until a settlement is reached or a final judgment is rendered and then the amounts due shall be reduced to that extent that damages for expenses and loss otherwise recoverable as a P.I.P. benefit are included in any such settlement or judgment.

SUBROGATION [Sect. 4]

Any insurer paying benefits under P.I.P. shall be subrogated to that exact extent to the rights of any party it pays and may bring an action in tort against any person liable for such damages who is not exempt such liability.

ASSIGNED CLAIMS [Sect. 4]

Insurers authorized to provide P.I.P. within the Commonwealth shall organize and maintain an assigned claims plan. Any resident, other than the owner or registrant or a member of their household, who suffers loss or expense as a result of an injury arising out of a motor vehicle accident within the Commonwealth may obtain P.I.P. benefits in any case where no such benefits are otherwise available provided and the person is entitled to the P.I.P. benefits.

PREMIUM SURCHARGES AND DISCOUNTS [Sect. 7]

In fixing classifications to be used in connection with motor vehicle liability policies the Commissioner shall establish reasonable surcharges, above premium charges otherwise due, for each conviction for a moving violation committed by any member of the policyholder's household who is authorized to operate the motor vehicle covered by the policy. Reasonable surcharges include the following:

(1) Conviction of driving under the influence of alcohol or narcotic drug - 100%

(2) Conviction of speeding - 20%

(3) Conviction of other moving violation - 10%

The surcharges for any conviction shall not in any event exceed a period of more than five years in length.

The Commissioner shall also establish reasonable discounts to be applied when the policyholder or any other driver in his household authorized to operate the motor vehicle has been a driver involved in an accident within the previous calendar year. A reasonable discount is presumed by this act to be 2%.

MANDATORY DISCOUNT OF PREMIUM RATES [Sect. 6]

Notwithstanding any other provisions of the Massachusetts General Law, the Commissioner of Insurance shall establish risk and premium charges of at least 15% lower for each classification of risk or regarding personal injury protection.

RENEWALS OF DRIVERS 65 YEARS AND OLDER [Sect. 8]

Every policy of insurance issued to a person who is 65 years or older shall be renewed at the option of the policyholder except for:

(1) Fraud in the application for insurance:

(2) Conviction for a moving violation.

(3) Suspension of an operator's license for more than 30 days.

(4) Revocation of a license or registration.

(5) Ineligibility for merit rating discounts due to accident involvement.

(6) Conviction for driving under the influence of alcohol or narcotic drug.

(7) Nonpayment of premiums.

(8) Or in the case of a particular insurer a general reduction in the volume of automobile insurance in the Commonwealth determined by the Commissioner not to be an attempt to circumvent the purpose of this section.

No insurance company shall refuse to issue, renew or execute a motor vehicle liability policy because of age, sex, race, occupation of principal place of garaging of the vehicle.

GENERAL RENEWALS [Sect. 8]

Except for fraud in the insurance application or for non-payment of premiums, an insurer may not refuse to renew a policy to a policyholder who is entitled to the discount for accident involvement for two consecutive years.

Except a person entitled to the above renewal provisions, an insurance company may refuse to renew the policy of a person under the age of 65, but if such refusal is due to any cause other than:

(1) Fraud in the insurance application or renewal;

(2) Conviction for a moving violation;

(3) Suspension of a driver's license for more than 30 days;

(4) Revocation of a driver's license or registration;

(5) Ineligibility for merit rating discounts for accident involvement;

(6) Conviction for driving under the influence of alcohol or narcotic drug;

(7) Or in the case of a particular insurer, a general reduction in the volume of automobile insurance, such insurer shall be required to accept an additional assigned risk for each such refusal.

THE MASSACHUSETTS NO-FAULT PLAN

A COMMENT

The purpose of this critique shall be to examine the Massachusetts no-fault bill in relation to the insurance problems that existed prior to its enactment and to determine if this legislation provides adequate solutions to the problem areas.

The proponents of the no-fault concept attribute high insurance rates to the inadequacies of the present tort liability system. Two of the primary reasons most often cited for excessive rates are the expense of litigation, especially attorney's fees, and court awards of general damages for intangible losses such as pain and suffering experienced by the accident victim. By restricting litigation and general damage awards, no-fault advocates claim that a reduction in rates may result.

A major premise for the Massachusetts no-fault bill, like any similar concept, is that it restricts an individual's right to bring on action for damages that have been inflicted upon him by another. Opponents of no-fault insurance assert that restricting the opportunity to bring on action for damages (which includes payment for pain and suffering) obliterates fundamental rights of the citizen in order to assure the needs of the private insurance company. On the

other hand, no-fault advocates maintain that in a limited plan, such as the Massachusetts bill, accident victims are assured of their actual economic loss and that limitations of tort liability do not apply in the serious injury cases where pain and suffering is most evident. The merits of this debate shall not be examined in this critique except to mention that the Supreme Court of Massachusetts, in a widely criticized opinion, held that the constitutional rights of the individual were not being violated by the Massachusetts no-fault act as that statute met the general requests required by the due process clause of the Fourteenth Amendment.[1]

A primary consideration to be examined at this point is whether in fact the Massachusetts legislation has successfully met the purposes for which it was enacted. Bodily injury (BI) rates were reduced by 15% by statute and this would indicate at least some progress toward curbing excessive premium rates. However, it should be noted that while BI rates were reduced, a 38% increase for physical damage rates was granted; the end result being that the policyholder realized no appreciable savings. This can be illustrated by

[1]Pinnick V. Cleary, Massachusetts Supreme Judicial Court, June 29, 1971.

an example using a policyholder who is paying $100 for his auto insurance. If $40 of the premium goes for bodily injury coverage and $60 goes to physical damage coverage (as is typically the case), the rates would be adjusted to $34 for bodily injury (15% decrease) and $82.80 for physical damage coverages (38% increase) under the present structure. Instead of paying $100 for auto insurance, the policyholder now pays $116.80 for basically the same coverage. Any claims to date that the Massachusetts no-fault plan has actually reduced premiums for the average policyholder must be viewed as fraudulent.

Proponents of the Massachusetts bill claim that policyholders may realize reductions of up to 45% of premium cost under the tort liability system. By using the maximum $2,000 deductible which excludes the policyholder and his family from payment of first party benefits, a 30% reduction in premium rate is required. Coupled with the 15% statute reduction, the total of 45% is computed. But this is a completely illusory reduction by which insurers stand to benefit the most. The remaining 55% is paid by the policyholder as residual liability protection against the possibility of an out-of-state accident where he is at fault or an accident in Massachusetts where he is at fault and the other party may assert tort liability. Although statistical data is not available from Massachusetts on the frequency of

either type occurrence, it is submitted that the premium discount available for deductibles does not truly reflect actual experience data, and the cost of residual liability insurance to the policyholder is excessive. M. J. Sabbagh, Fire and Casualty Actuary, Massachusetts Insurance Department, indicated that the deductible option was not widely utilized during the first six months of the plan but that he expected the use of this option to increase during the ensuing months. If this be the case, then there should be even a greater decrease in the frequency of claims against insurers and the insurance industry should stand to retain a greater amount of the premium dollar as a profit.

Another reason for advocating the enactment of the Massachusetts Plan was to increase the amount of the premium dollar available for benefits payable to the accident victim. Early experience data has indicated that exactly the reverse situation has occurred. Based on a sampling of the first six months experience data, the Massachusetts Insurance Commissioner announced that "The 1971 first six months average paid claim cost compared to the first six months of 1970 showed a decrease of 55.4%.[2] Various sources, including panelists at the Casualty Actuarial Society's annual meeting, have conceded that this data is an unreliable basis for predicting future

[2]C. Eugene Farnum, Commissioner of Insurance, July 27, 1971.

experience, but may be used for the purpose of determining the distribution of the premium dollar being returned to accident claimants. Actuarial studies reflect that under the tort liability system claimants receive a return of 55% per premium dollar paid into insurance companies.[3] In Massachusetts, loss payments for the first six months, as indicated above, decreased 55.4%, though premium payments had been reduced only 15%. Thus loss payments were 24.5% of the prior premium level (44.6% of 55%), or 28.8% of the new reduced level (24.5% divided by .85). The obvious result of the Massachusetts legislation is that insurers are able to retain a far greater percentage of the premium dollar under present rate structures - 69.9% as compared to 45% under the tort liability system - and realize an immense windfall profit at the policyholder's expense.

The experience data released by Massachusetts which revealed a 57.5% decrease in the number of incurred claims and a 55.4% decrease in the average paid claim cost is especially surprising when considering both parties to an accident may claim benefits under the no-fault concept. It would appear that at least the number of incurred claims would increase, rather than decrease. Possible reasons that

[3]"Report of Special Committee to Study the Keeton-O'Connell Basic Protection Plan and Automobile Accident Reparations" (New York: American Insurance Association, 1968). Exhibit 1, Sheet 2.

have been cited as to why claims reported to date may underestimate the number of actual claims are: delays by attorneys until the constitutional question was settled; the reluctance of policyholders to file against their own carriers because of possible cancellations or non-renewals or increased premiums; the normal lag between the time when the expenses are incurred and the time when doctors and hospitals complete their billing; policyholders may have become more conscious of the consequences of reporting small claims. If any or all of the above reasons are valid, then it is entirely possible that the experience data for Massachusetts will be dramatically realigned in the future. If not, then as discussed in the preceding paragraph, the loss payment percentage has been substantially reduced to the gain of the insurance industry.

In addition to premium rates, another major problem which confronts automobile insurance policyholders is the possibility of cancellation or non-renewal of the policy for many states, insurers may cancel or refuse to renew policies for a variety of reasons which include driving violations, involvement in accidents regardless of fault, geographic area of automobile garaging, or change in marital status. Because of the vast scope that the cited reasons encompass, the decision to cancel or non-renew a

policyholder is left virtually to the discretion of the insurer and, in repeated instances, policyholders have been arbitrarily cancelled after years of dutifully paying insurance premiums.

The Massachusetts Insurance Code, deals squarely with the problem of cancellation by providing that policies may not be cancelled except for misrepresentation or fraud in the insurance application or for non-payment of the premium. Of course if the policy is cancelled for either of these reasons, the insured is compelled to accept insurance under the "assigned risk" program at substantially higher rates. However, as cancellations are limited to two specific areas, reasonable protection from arbitrary or unjustified cancellations is afforded the policyholder.

Non-renewal of insurance policies is treated in a different manner than are cancellations as the insurer is provided greater latitude as to whom he is required to renew. It is imperative to note that where a policy has not been renewed and the policyholder is unable to obtain coverage from another insurer he may turn to the assigned risk program which will assign him to another carrier. In most states, this situation would result in a substantial increase in basically liability rates to the insured, but the Massachusetts regulations governing the assigned risk program compel the insurer to offer the basic liability coverage to a non-renewal assignment at the standard rate. The effect of a policy

non-renewal may be seen in other areas such as increases in premium rates for, or unavailability of, collision, comprehensive, or increased limits coverage, and to this extent the policyholder is placed at a disadvantage.

Chapter 744 of the Acts of 1970 sets forth the basic standards as relating to the non-renewal of insurance policies. Of particular interest are obvious discriminatory facets pertaining to drivers over 65 years old. Although this chapter purports to allow renewal of the policy at the option of the policyholder, section eight permits non-renewals by insurers of older drivers virtually at the companies' discretion.

Three of the seven reasons for which an over 65 driver may be refused renewal are:

(1) Conviction for a moving violation;

(2) Ineligibility for merit rating discounts due to an accident involvement;

(3) Or in the case of a particular insurer a general reduction in the volume of automobile insurance in the Commonwealth so long as the Commissioner determines it not to be an attempt to circumvent this section.

It is undisputed that insurers consider older drivers a high risk and prefer not to insure such drivers at the normal premiums. Where insurers are given the opportunity to refuse to renew coverage based on a single moving violation, it is not difficult to imagine policies not being renewed in

situations where the insured has an accident-free or conviction-free driving record for 30 or 40 years and then upon a single moving violation conviction, being cancelled and forced to accept "assigned risk" coverage. While a moving violation is a serious offense and a factor that should be considered in determining insurance rating systems (as provided in the surcharge clause of Section 7), it should not be considered as a determinative factor for non-renewal for one class of drivers over 65 and not for others under 65. A single conviction for a moving violation does not indicate that a person is no longer capable of operating an automobile safely and should not be available as a tool in the hands of insurers to arbitrarily cancel coverage for the driver 65 years of age or older.

Another provision for cancelling a policy of the driver 65 years or older is if the policyholder does not qualify for merit rating discounts due to automobile accident involvement. The basis for the Massachusetts bill is, of course, limiting the determination of "fault" in most automobile related accidents. Section 7 of the bill provides merit rating discounts only for drivers who are not involved in automobile accidents, and the question of "fault" is not at issue. In other words, a discount may be refused to a driver if he, or a member of his household, is involved in an accident even though the other party is obviously at

fault. This inequity places the over 65 driver at an even greater disadvantage. Because he does not qualify for the merit rating discount the older driver is subject to cancellation. The gross injustice of this provision may be revealed in the situation where a member of the over 65 policyholder's household is involved in an accident and clearly is not at fault. Because this would be reason for ineligibility for a merit discount, the policy may be cancelled merely because of the age of the policyholder, a discriminatory factor that has, in such a situation, no bearing on the accident whatsoever.

The third provision for non-renewal may also arbitrarily affect the over 65 driver as insurance companies reducing their volume within the Commonwealth may elect not to renew members of this selected classification. However, as the insurance commissioner is permitted to determine whether or not this is an effort to circumvent this section, a further examination is not necessary.

By comparing standards for non-renewal of over 65 and under 65 drivers as will be done subsequently in this brief, it is not difficult to determine that there is a serious disadvantage as relating to insurance coverage for the over 65 driver. The obvious question to be asked at this point is if there is any basis for insurer's claims that the older

driving population is a greater risk than the younger, and should be subject to a more liberal non-renewal policy. Of particular significance to this inquiry is a study by Judge Sherman A. Finesilver entitled, "The Older Driver - A Statistical Evaluation of Licensing and Accident Involvement in 30 States and the District of Columbia."[4]

In his evaluation Judge Finesilver concludes:

> "This study shows that the older driver has less than his proportionate share of "all accidents," "fatal accidents," and "injury accidents." In the categories of "all accidents" and "injury accidents" the older driver has the lowest median accident involvement index of any age group. The scope of this study indicates that the trend is of national, rather than local significance. The older driver is found to have low accident involvement rates in highly populated states such as New York, Illinois, and New Jersey, as well as in sparsely populated states like Montana and North Dakota. The trend is further supported by states in the East, Midwest, Rocky Mountain Region, and on the Pacific Coast.
>
> "The older driver is not represented in fatal accidents to the same extent as could be expected by the number of drivers in his age group; nevertheless, involvement in fatal accidents is a significant problem for the older driver and may be partly due to his inability to withstand injury. The elderly driver is more likely to have a fatal accident than any driver from age 35

[4]Hearings Before the Subcommittee on Antitrust and Monopoly of the Committee on the Judiciary, United States Senate, First Session, 91st Congress, November 24, 25, 26, 1969, p. 10229-10236.

> to age 64. Only the youngest two age groups, under 24 and from 25-34, have a higher rate of fatal accident involvement. The statistical data supporting these conclusions may be found in Table 1."

Table 1 may be found as Appendix 1 of this brief.

It appears then that insurer's claims that the over 65 drivers constitute a high risk category, when in fact, their accident rate level is below that of the rest of the population, and that over 65 drivers should be subject to a more liberal cancellation policy is a perfect example of what has popularly become known as "crystal ball underwriting". Further evidence to this fact is that many insurers have recently started to discount older drivers' premiums. This being the case, there is no apparent reason why the over 65 driver should be subject to per se discrimination by the renewal and cancellation provisions of any insurance code - whether it be a fault or no-fault concept.

As regarding the under 65 driver, section 8 requires an insurer to renew a policyholder who is entitled to a merit rating discount for two consecutive years, except for fraud in the insurance application or for nonpayment of premiums. But where the policyholder fails to qualify for accident-involvement discount, the insurer may refuse to renew the insurance coverage. No mention of what cause is necessary for non-renewal is stated by the act; however, if the refusal

to renew is for any other reason than as listed (1) - (7) under "General Renewals" on page 7 of the Summary, then the insurer is required to accept an additional "assigned risk" for each such refusal.

Provided the policyholder is able to maintain his merit rating discount, he is afforded reasonable cancellation protection by this act. It is in this particular area; however, that the inequities of the no-fault concept appear. As eligibility for the discount depends entirely upon an accident-free driving record, a policyholder may lose his eligibility if he or a member of his household is involved in an automobile mishap, even though fault is entirely with the other party. To a certain extent this system may encourage safer driving on the part of a policyholder but retention of the merit rating discount boils down to a matter of chance - that being the possibility of an unavoidable involvement in an accident where a policyholder, through no fault of his own, may stand to lose his insurance coverage at preferred rates. This is not to say that every insurer will refuse to renew or will cancel policies upon every loss of the merit discount, but a system that may force an individual to accept insurance at "assigned risk" rates merely because he was the totally innocent victim of an automobile accident does not meet or solve the problems in this area.

SUMMARY

A review of the Massachusetts legislation reveals that to date the policyholders have yet to realize any substantial decrease in premium cost even though apparently there has been a significant reduction in loss payments by insurers. The loss payment decreases have not yet been substantiated by supporting statistical data but if such expectations are met, insurers will stand to gain immense windfall profits unless sizeable rebates to policyholders are mandated.

It does not appear that Massachusetts faces the same problems of cancellation and non-renewal that exist in most states. The cancellation provisions seem adequate and the non-renewal aspect does not affect the policyholder to the degree as it would in other jurisdictions. The discriminatory aspect relating to the older driver is curious in light of Massachusetts provisions that permit insurers to require such class of persons to take a physical examination prior to renewal of a policy.

Though benefits were not specifically discussed in the comment, the main thrust of this legislation seems to be the denial of general damages to accident victims who suffer minor injuries. Though some inequities may arise in this area, as well as the wage loss aspect, the benefits seem to be adequate, providing one accepts a "no-fault" philosophy.

APPENDIX C

STAFF ANALYSIS

OF

THE PENNSYLVANIA MOTOR VEHICLE

NO-FAULT PROTECTION PLAN

(Proposed Senate Bill 999)

Submitted to:

John R. Jewell
Secretary of Licensing and Regulation

SUMMARY OF THE
PENNSYLVANIA MOTOR VEHICLE NO-FAULT PROTECTION PLAN
(Senate Bill 999)

The proposed Pennsylvania insurance act advocates a system of compensation that could be classified as an "unlimited no-fault" concept. The restructured automobile reparations system under this act would virtually eliminate personal responsibility and liability for automobile related accidents. A summary of the proposed bill is as follows:

SHORT TITLE (Section 1)

The title of this act is the "Pennsylvania Motor Vehicle No-Fault Protection Plan".

DECLARATION OF LEGISLATIVE POLICY (Section 2)

The sponsors of this Legislation propose the following purposes for its enactment:

(1) To require mandatory no-fault insurance as a condition precedent for the operation of a motor vehicle registered in the State of Pennsylvania;

(2) To provide prompt payment without regard to fault to motor vehicle related accident victims;

(3) To permit more economical insurance premiums, and more liberal wage loss and medical benefits by reducing the amount of intangible loss allowed an accident victim;

(4) To reduce the amount of court litigation presently surrounding automobile accident claims;

(5) To guarantee the availability of insurance coverage at reasonable prices.

(6) To create a system that can be more adequately regulated.

PERTINENT DEFINITIONS (Section 3)

As relating to this brief, the significant definitions are as follows:

(1) "Motor Vehicle" means any vehicle drawn by electrical or mechanical power, and which is primarily designed for use on the public roads and highways, except vehicles designed exclusively for rail operation.

(2) "Motor vehicle accident" means an occurrence which is not specifically expected and arises out of the operation of a motor vehicle.

(3) "Economic loss" means damages recoverable on clauses (2) through (5) of Section 4 which include:

A. All reasonable medical, hospital and therapeutic expenses.

B. All lost earnings or loss of earning power.

C. All reasonable charges for funeral and burial expenses.

D. All other reasonable expenses necessary as a result of the accident caused injury including services in substitution for the injured.

(4) "Total loss" means damages recoverable in clauses (2) through (6) of Section 4 which include:

A. All economic loss as noted above.

B. Intangible items, including pain and suffering, if, but only if, the injury causes death, loss of body member or loss of sight, permanent partial disability of seventy per cent or more or disfigurement that is permanent, severe or irreparable.

ELEMENTS OF COMPENSABLE RECOVERY (Section 4)

Except as provided in Section 5, in every action to recover for damage sustained in a motor vehicle accident the following damages and none other may be recovered:

(1) All damage to property, real or personal.

(2) Economic loss.

(3) Total loss.

EXCLUSION OF RECOVERY IN ACTIONS FOR DAMAGES (Section 5)

In any action to recover for damage in a motor vehicle accident, no recovery shall be allowed for damage constituting economic loss which the claimant has recovered or is entitled to recover from a policy of insurance or on assigned claims plan.

Furthermore, a claimant may not recover if he is not entitled to economic loss payment because of his failure to obtain a no-fault policy as required, or if, pursuant to subclause ii of clause (1) of Section 9, the accident

occurs:

(1) While the claimant is using the automobile in the course of committing a felony;

(2) As a result of the claimant operating a motor vehicle with specific intent to cause harm or damage;

(3) When the claimant is driving without a valid operator's license;

(4) While the claimant is driving under the influence of alcohol or narcotics.

INSURANCE REQUIREMENTS (Section 9)

An insurance policy shall provide:

(1) Payment of economic loss benefits up to the maximum amounts hereafter set forth, without regard to fault, to all persons sustaining injury in any motor vehicle accident within the Commonwealth or to the operator and occupants of a motor vehicle sustaining injury in an accident not subject to the law of the Commonwealth but which occurs within the United States, its territories, and Canada.

(2) Liability coverage in the amounts required under the financial responsibility laws of other jurisdictions and coverage of the amount of $10,000 per person, $20,000 per occurrence and $5,000 for property damage if the law of the Commonwealth is applicable.

(3) At the option of the insured vehicular property damage insurance which pertinent to Section 21, shall provide, without regard to fault, payment to the owner of the

insured motor vehicle all reasonable costs or repair or replacement of the motor vehicle in excess of the sum of $100 and the cost of substitute performance up to $15 a day for not more than twenty-one calendar days from the date of the accident. Section 22 provides that failure to purchase the vehicular property damage insurance automatically acts as a waiver of the right to recover for damage to his vehicle in an accident unless:

A. The operation of his motor vehicle was unauthorized; or

B. The motor vehicle was parked at the time of the accident in such a way as not to cause an obstruction.

C. The operator of another motor vehicle caused the accident and by virtue of subclause (ii) of clause (1) of Section 9 would not be entitled to economic benefits.

(4) Additional coverages at the option of the insurer and subject to the option of the insured including, without limitation, on a fault or no-fault basis for total loss, damage to real or personal property and liability coverage in excess of $10,000 - $20,000 - $5,000.

(5) That the policy shall not be subject to cancellation or nonrenewal except in accordance with procedures approved by the State Insurance Commissioner.

(6) Appropriate provisions for arbitration of disputes.

REDUCTIONS OF ECONOMIC LOSS BENEFITS (Section 10)

Economic loss benefits under this act shall be primary and shall be reduced only by the amount of any benefits the claimant is entitled to receive under:

(1) Any workman's compensation; or

(2) Unemployment compensation; or

(3) Disability or any similar law; or

(4) The Social Security Act.

All other policies of insurance may contain provisions including benefits for economic loss which are payable under no-fault insurance policy.

SPECIFIC LIMITATIONS ON ECONOMIC LOSS (Section 11)

Except as provided in Section 10, economic loss coverage shall be without any limitation in amount except that for the following types of economic loss such coverage need not exceed the amounts or measures indicated as to such type of economic loss:

(1) One thousand dollars ($1,000) per month or 85% of each injured person's monthly wage, whichever is less, for as long a period as the injury causes the inability to engage in gainful activity similar to that prior to the injury.

(2) Thirty-six thousand dollars ($36,000) total for each injured person's lost earnings and earning power or earning power or for contributions he would have made to his

dependents.

(3) Payments for a hospital room to the extent of the cost of a semi-private room unless the injury requires intensive care.

(4) Payments for funeral and burial expenses up to $1,000.

REQUIREMENTS FOR PROMPT PAYMENTS (Section 12)

Economic loss payments shall be paid as the damage accrues, and such payments may not be anticipated or assigned.

Benefits to the surviving spouse or dependents of a person whose injury resulted in death shall continue for the shorter of such length of time:

(1) As the decedant could have been expected to live but for his injury; or

(2) Until his spouse remarries; or

(3) With respect to dependent children, until such children are self-supporting, but in no event shall payments to dependent children continue beyond the age of 21, except to those who are physically or mentally handicapped as to be unable to support themselves.

Economic loss benefits shall be made within 30 days after receipt by insurer of demand for payment by one entitled thereto. (Section 15)

APPORTIONMENT OF CERTAIN PAYMENTS (Section 14)

Any insurer which has paid economic loss benefits for any person who was not at the time of his injury an occupant in a motor vehicle shall be entitled to apportionable payments from each insurer of every other insured motor vehicle involved in the accident.

INSURER'S ARBITRARY DENIAL OF CLAIMS (Section 16)

At the discretion of the court a claimant who has been denied payment of benefits by an insurer without reasonable foundation may be allowed an award of reasonable attorney's fees to enforce the claim.

Furthermore, the court may impose penal damages payable to the claimant and assess public costs of trial to be paid by the defendant.

FRAUDULENT OR EXCESSIVE CLAIMS (Section 17)

At the discretion of the court, a defendant in a motor vehicle accident case may be awarded reasonable attorney's fees for its defense against the claimant where such claim was fraudulent or so excessive to have no reasonable foundation.

The court may also impose penal damages payable to the defendant and assess the claimant the public costs of the trial.

LIMITATION ON THE RIGHT OF SUBROGATION (Section 18)

No insurer shall be entitled to subrogation in connection with payment be it of economic loss benefits or of vehicular property damage benefits as against any owner, operator or insurer of an insured motor vehicle.

ASSIGNED CLAIMS PLAN (Section 23)

Every insurer writing no-fault policies, within the Commonwealth is required to participate in the assigned claims plan and the assigned claims bureau.

Any resident of the Commonwealth entitled to claim because of injury arising out of a motor vehicle accident occurring within the Commonwealth may obtain payment of economic loss if:

(1) No such insurance is applicable to the injury; or

(2) No such insurance applicable to the injury can be identified; or

(3) The identifiable insurance applicable is inadequate to provide benefits up to the maximums involved because of the financial inability of one or more insurers to fulfill their obligations.

A person who because of an exclusion in subclause ii of clause (1) of Section 9 is disqualified from receiving insurance benefits or who is the owner of a motor vehicle which should have been but was not insured as required by this act is disqualified from receiving benefits under the assigned

claims plan.

(4) The assignment of claims shall be made according to rules that assure for allocation of the burden of assigned claims among insurers doing business in the Commonwealth and proportioned to the volume of insurance they write under this act.

(5) The insurer to which a claim is assigned and which pays economic loss benefits shall be entitled to recover all such benefits paid and appropriate loss adjustment costs incurred from the owner of the uninsured motor vehicle or from his estate.

RESPONSIBILITIES OF INSURERS OF LARGE MOTOR VEHICLES (Section 24)

Notwithstanding the provisions of any other section of this act, when one or more of the motor vehicles involved in a motor vehicle accident is larger than an ordinary passenger automobile, the insurer of the larger vehicle shall be responsible for such percentage of any economic loss benefit payments to the occupants of other insured motor vehicles in a percentage as determined by categories established upon the increased severity of injury caused by such large vehicles.

RATE REDUCTION (Section 25)

The total cost of coverage required under Section 9 (economic loss) and of vehicular property damage insurance shall be at least 10% less than the total cost of equivalent

physical damage insurance and the coverage required by the financial responsibility law of this State.

PENNSYLVANIA MOTOR VEHICLE NO-FAULT PROTECTION PLAN
(Senate Bill 999)

CRITIQUE

Senate Bill 999 (S.B. 999) is one of the two insurance reform bills being considered by the Pennsylvania legislature. The total make-up and concept of this bill is similar to that of S.945 as originally introduced into the United States Senate by Senators Hart and Magnuson. Senate Bill 999 virtually eliminates tort liability in an automobile related accident except where the accident victim suffers "catastrophic" bodily harm. In examining S.B. 999 it is necessary to consider the ambiguities created by the somewhat illusory language found with the draft of this bill.

As do most no-fault laws, S.B. 999 requires no-fault coverage as a condition precedent for every Pennsylvania-registered motor vehicle operated within the state. S.B. 999 does not expressly prohibit automobile tort actions and, in Section 4 provides for damages that may be recovered in such an action. Basically the damages that may be recovered are:

(1) All damage to property, real or personal;

(2) All economic loss;

(3) Total loss.

However, to accomplish the purpose "of reducing the need to resort to lawsuits and litigation", subsequent exclusions

of the right to bring an action virtually eliminates the possibility implied in Section 4 to sue for tort damages. By reviewing each category of damage separately, the method by which tort liability is excluded may be examined along with certain inequities that arise because of such exclusions.

PROPERTY DAMAGE

A perfect example of ambiguities that arise in S.B. 999 may be demonstrated by the manner in which the bill provides for recovery of property damage. Except as limited by Section 5, Section 4 permits recovery for damage sustained in an automobile accident for "[a]ll damage to property, real or personal." Section 5 prohibits actions for "damage constituting economic loss which the claimant has recovered or is entitled to recover from a policy or certificate of insurance issued to meet the requirements of this act." Property damage would not fall within this exclusion to tort liability as it would not constitute "economic loss" as defined in Section 4, clauses (2) through (5). It appears that at this point, there still may be an action to recover for property damage.

While Section 9 requires insurers to offer "vehicular property damage" (in effect, collision coverage) at an additional premium to the insured (Section 20), Section 19 stipulates that "[t]he owner of a motor vehicle..shall not

be required to maintain insurance with respect to property damage to his motor vehicle..." The definition of vehicular property damage coverage is payment by the insurer, "without regard to fault, to the owner of the insured motor vehicle...of all reasonable costs of repair or replacement of the motor vehicle in excess of the sum of $100..." The ambiguity that envelops this aspect of coverage is created by Section 22 which states that "[f]ailure by the owner of a motor vehicle required to be insured under Section 6 of this act to purchase vehicular property damage insurance as set forth in Section 21 of this act shall constitute a waiver of the right to recover for damage to his motor vehicle sustained in a motor vehicle accident", unless the operation of his motor vehicle was unauthorized, the motor vehicle was parked at the time in an unobstructive manner and was struck by another vehicle or the operator of the other vehicle caused the accident and by virtue of exclusions listed on Page 3 of the Summary would not be entitled to receive economic loss benefits.

The immediate question which Section 22 presents is whether a person who has purchased vehicular property damage coverage may bring a tort action or otherwise compel an at-fault driver to compensate him for damage to his motor vehicle. By omission, S.B.999 appears to permit such an interpretation. If this be the case, the consequences of such a regulation

creates inequities of resounding proportion. Of particular significance is that this aspect of S.B. 999 would discriminate against the poor and lower income drivers, the very class of persons for whom insurance reform should be designed to assist. Under this interpretation, accident victims will barred from asserting a right to be compensated unless they have purchased additional insurance at additional premiums. Typically vehicular property damage or collision as it is commonly termed is purchased by those who have expensive or new automobiles and desire to protect their investment against their own carelessness. Usually those drivers who own an older or less expensive automobile do not carry such coverage as the premium rate is too high to reasonably justify its purchase. A driver who does not purchase collision coverage under the present system of insurance usually relies on his own driving skill to protect his automobile against damage. If he is involved in an accident and is "not-at-fault", he may be compensated for his losses by the wrongdoer, even though he can't afford to purchase all possible types of insurance coverage such as collision. But this interpretation of S.B. 999 would prohibit those who can't afford to carry vehicular property damage from claiming compensation from the "at-fault" driver and the risk of losses passes to those who can best afford it. The courtroom door will be closed to the poor or lower income accident victim, while

those who are able to afford the extra premium may still recover from the wrongdoer. The discrimination is so obvious that one must assume that this possibility of interpretation stems from a faulty drafting of S.B. 999 and that the alternative situation must be the one intended by its sponsors.

The following alternative interpretation appears to reflect the probable intent of the sponsors of S.B. 999; that is, if a policyholder desires to insure his automobile against property damage, he must elect to purchase vehicular property damage which would compensate him without regard to fault. Otherwise, the policyholder would be stopped from asserting any tort action to recover for damage to his automobile unless one of the exclusions apply. Note that this intent is not clearly established by a strict interpretation of the bill, however, this section appears to be patterned after similar type legislation in which such intent was appropriately drafted. The ramifications of Section 22 viewed in this light are subtle, but startling.

In conjunction with the discussion of vehicular property damage, notice must be made to Section 9 (2) which requires vehicle liability coverage in the amount of $10,000 per person, $20,000 per occurrence and $5,000 for property damage liability. The significant aspect relating to vehicle property damage is that every policyholder is required to

purchase the $5,000 property damage liability. Property damage has been generally defined as that damage which is paid out by the "at-fault" driver's insurer for damage to the other car, guardrails, fences or other types of property. Under the tort liability system, claims for repair or replacement of the "not-at-fault" driver's automobile constituted approximately 97% of all property damage claims, while only 23% payment was made for damage to houses, fences, and other type real and personal property.[1]

It appears then that policyholders are required to carry property damage liability premiums at a 10% reduction while insurers are only liable to compensate, for the most part, non-automobile property damage. Actuarial studies have indicated that in such a situation a 91% reduction in property damage premiums is possible.[2] The impact of S.B. 999 in this aspect would enable insurers to retain 81% (91%-10%) of property damage premiums less that amount which would be paid for the exceptions to tort exclusions found in Section 22 (1)-(3). In relation to past experience claimants who would be able to receive compensation for such

[1]Report of American Insurance Association's Special Committee to Study and Evaluate Keeton - O'Connen Basic Protection Plan and Automobile Accident Reparations, 1968, P. 16.

[2]IBID, Exhibit 1, Sheet 1

exceptions would be minimal and most vehicular property damage claims would be paid only to those who elect to insure themselves for vehicular property damage at increased premiums. Country-wide experience indicates that stock companies, mutual companies, and reinsurance companies generally showed net gains as relating to the issuance of collision coverage. Although limitations to subrogation rights and insurers may affect the profit ratio of collision coverage to some extent, there are ample indications that an immense windfall profit will be available to insurers writing property liability insurance in Pennsylvania. Obviously insurance interests favor the passage of this bill for that reason.

In essence, the overall effect of S.B. 999 is to drastically realign the right to be compensated for damage incurred to a motor vehicle. Those who are affluent enough to purchase vehicular property damage coverage will be compensated for their loss, but that class of drivers unable to afford additional premium costs will be precluded from covering their losses, creating an undemocratic hierarchy of the rich who may receive such benefits, while the poor will be required to lick their own wounds.

ECONOMIC LOSS

To meet the requirements of S.B. 999, Section 9 requires every insurance policy to provide payment of economic loss benefits, without regard to fault, to all persons sustaining injury in an automobile related accident. Economic loss is defined in Section 3 [Summary, P. 2, (3)]. Section 5 effectively excludes tort recovery for damages constituting economic loss which the claimant has recovered or is entitled to recover or would have recovered but for his failure to comply with the mandatory insurance requirement or but for the exclusion of recovery by virtue of Section 9 (1) (ii) [Summary, P. 3, (1)-(4)].

In essence, claimants may not file an action and recover for <u>all</u> economic loss as provided for in Section 4 but must recover from their own insurer the <u>limited</u> compensation as specified by Section 11. Provisions of Section 11 leave the right to recover for all medical expenses unimpaired; however, wage loss or earning power is limited to $1,000 per month or 85% of the claimant's earning power, whichever is less. Benefits are further limited to a total maximum amount of $36,000 for earning power and services in substitute of that which the injured person would have performed. Because of such limitations, certain inequities must arise.

The $1,000 a month maximum clearly discriminates against those who have earnings of more than $14,000 a year. If

inflationary pressures continue and the average wage and salary continue to grow, more and more people would not be fully compensated for their monthly wage loss due to the fixed limitations. Under S.B. 999, it is not even entirely clear if policyholders may have the option to protect themselves against wage loss caused by automobile accidents. Section 9 (4) appears to leave the decision of additional coverages to the option of the insurer. As any insurance reform plan should not discriminate against the lower income citizens, neither should there be arbitrary denials to those who have a greater earning capacity. One should not be compelled by statutory regulations to change a standard of living due to the carelessness of another.

An immense injustice is evident in the case where there is no wage loss or tangible loss of earning power. For example, a college student could suffer a brain injury that could cripple his learning capacity for life but still enable him to perform normal labor and otherwise live a normal existance. His compensation would amount to medical expenses, or at best with an extremely liberal interpretation given to loss of earning power, a total amount of $36,000. Quite clearly the individual has suffered damage and wage loss exceeding the maximum statutory limit, yet under the limitation of S.B. 999, would be precluded from any further

recovery.

Provisions of Section 10 permit payment of economic loss benefits to be reduced by collateral sources such as workman's compensation, unemployment compensation, the disability benefits law or any similar law and the Social Security Act (U.S. Code, Title 42, Sections 301 et seq.). These collateral funds are subsidized by employees, employers and taxpayers to compensate eligible recipients for wage loss due to employment related injury, a general reduction in personnel, or the establishment of need, as regulated by the "Aid to Dependent Children" aspect of the Social Security Act. The natural injustice of a plan to use these funds as primary compensation for automobile related injuries is obvious. Employers are required to provide workman's and unemployment compensations, and usually such funds are established in an insurance-type arrangement whereby the employer pays premiums based on the number of workers employed, the hazard of such employment, and past experience as to the frequency upon which employees of a particular employer are compensated by the fund. It would be strange indeed to argue that it is natural justice to absolve tortfeasors of all liability and force employers to expend additional funds to compensate unemployed workers for wage loss sustained as a result of another's negligence. Penalizing one industry to subsidize another as large as the insurance interests cannot appear

equitable from any viewpoint.

The effect of requiring the Social Security Act as primary compensation merits further consideration, as S.B. 999 contains ambiguities as to which sections of the act are applicable to automobile accident victims. It is not clear whether the intent of the sponsors is to compel claimants to utilize the "medical care for indigent persons", "aid to dependent children" or other sections of the Social Security for which a claimant may be eligible, as primary compensation. However, the particular interpretation of S.B. 999 would not only adversely affect low income accident victims but also every United States citizen who pays Federal taxes.

As S.B. 999 requires compulsory insurance, every driver must insure himself against risk of loss for an automobile related accident. However, before any economic loss benefits are paid by the insurer, all collateral coverage for wage loss as cited above must be exhausted. Where a claimant is marginally employed and not eligible for either workman's or unemployment compensation, benefits must be derived from the Social Security Act providing the claimant is an eligible recipient. In a situation where the accident victim's financial status is near poverty level and where the claimant has dependent children to support, his inability to work would qualify him for "welfare" assistance under the AFDC-UP program of the Social Security Act (US Code, Title 42, Section 607). Because he would qualify for such assistance,

S.B. 999 would compel him to accept such collateral compensation before he could draw upon the benefits of the policy he was required to purchase. As AFDC benefits have no maximum limitation, the insurance industry would be virtually exempted from compensating minimal income victims.

The most devastating injustice of this situation will be felt by the accident victim who must accept the welfare payments. The possibility that one must suffer the degradation of disclosing all of his financial information, along with the personal humiliation of circumstances surrounding the idea "of being on welfare" is in itself sufficient reason for doubting the wisdom of this aspect of S.B. 999. The only party who would stand to benefit by these provisions would be the insurance interests, as the number of claims they would have to compensate would be reduced.

Another aspect that should be noted is that AFDC benefits paid by the state are substantially financed by grants of the Federal Government. Whether or not the Secretary of Health, Education, and Welfare would permit rules to be promulgated that would swell welfare rolls to subsidize private industry is questionable.

TOTAL LOSS

Total loss is the amount of damages recoverable as provided in Section 3 (5) which includes economic loss and intangible loss. Actions for compensation of intangible items, including pain and suffering incident to injury are permitted by Section 4 "if, but only if, such injury causes death, loss of an eye or member of the body, permanent and total disability or permanent and partial disability of 70% or more, or disfigurement that is permanent, severe, or irreparable." It appears that while actions for economic loss are excluded by Section 5, an accident victim still retains the right to sue for intangible damages providing he meet the established criteria. Furthermore, Section 9 (4) provides that total loss benefits may be offered at the option of the insurer subject to the option of the insured, on a fault or no-fault basis. It is significant to note that this provision may be rendered a nullity as the insurer is not compelled to offer this coverage, and when insurers may decide to market such insurance, undoubtedly the premium rate will be high.

Realistically then, total loss benefits will be available only to those who suffer injuries that fall within one of the four categories as defined by Section 4 (6). Whether or not one accepts the philosophy of excluding damages for pain and suffering unless medical expenses exceed a certain

threshold limit or unless the injury is of a certain type, largely depends upon one's personal convictions. However, recoveries for pain and suffering are presently allowed based on the principle that persons may be forced to endure pain, suffering, and inconvenience through no fault of their own and that, but for the carelessness of another individual, they would not have had to undergo that ordeal. The actual pain that is experienced by the accident victim will not be alleviated by this bill but, in many instances, the sustained injury will not be of the type for which compensation of total loss is required. Notable exclusions would include such injuries as compound fractures, injuries to the nervous system, or enduring muscle strains; all of which could be excruciatingly painful, but for which no compensation of total loss would be available under S.B. 999.

SUMMARY

The most frequently cited problems with the present system of automobile insurance include the high cost of insurance premiums, the availability of insurance coverage and arbitrary cancellations of policies by insurers. Section 9 (5) provides that "the policy shall not be subject to cancellation or nonrenewal except in accordance with procedures and for specifications of reasons to be approved by the Commissioner." As this subsection does not specify circumstances under which cancellations or nonrenewals would be

permitted, any comment, other than the possibility exists to eliminate arbitrary decisions of insurers as to whom they will insure, would be entirely speculative.

S.B. 999 does not consider the problem of nonavailability of insurance or "assigned risk" programs, even though the plan requires compulsory insurance. The cancellation provisions of Section 9 (5) may impede the magnitude of the problem to some extent, but, in essence, an entire area of concern to policyholders is unresolved.

A 10% rate reduction is mandated by Section 25. But as previously considered, S.B. 999 realigns policyholder's rights in such a manner that in order to fully insure himself, one must purchase additional coverage at increased premiums thereby minimizing the effect of the 10% reduction. Quite clearly, a decrease in benefits, as well as limitations to common law rights, accompany the statutory rate reduction.

S.B. 999, as most other no-fault concepts purports to offer increased benefits at reduced premiums, however, it appears that this legislation also is another case of "now you see it, now you don"t."